NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5575-5576 OF 2021
[Arising out of SLP(C) Nos. 9948-49 of 2020]

KAYALULLA PARAMBATH MOIDU HAJI ...APPELLANT(S)

VERSUS

NAMBOODIYIL VINODAN ...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. These appeals challenge the judgment and order passed by the learned Single Judge of the Kerala High Court dated 21st August 2019 in Regular Second Appeal No. 83 of 2007 thereby allowing the appeal in part and remanding the suit to the learned trial court for fresh disposal. The appeals also challenge the order of the learned Single Judge of the Kerala

High Court dated 10th February 2020 in Review Petition No. 1242 of 2019 in RSA No. 83 of 2007 thereby dismissing the review petition.

3. The facts in brief giving rise to filing of these appeals are as under:-

The parties are referred to herein as they were referred to in the original suit. The appellant-plaintiff had filed a plaint in respect of the suit property claiming that it belonged to him by virtue of the registered assignment deed No. 110 of 1977 SRO, Kavilumpara executed by Kalariyullathil Paru. It is the claim of the appellant-plaintiff that he had effected improvements in the suit property and also paid land revenue. It is the claim of the appellant-plaintiff that the respondent-defendant has no right over the suit property. As per the plaint, a portion of the suit property is a coconut garden and the southern side is a rocky area with timber trees. It is the case of the appellant-plaintiff that there are definite boundaries on all the four sides of the suit property. It is his case that there is a road on the western

side of the suit property and the respondent-defendant's property is further westwards. It is the case of the appellant-plaintiff that he is residing at a distance of 1½ kms away from the suit property. It is further his case that on 16th January 2002 at about 10:00 a.m., the respondent-defendant and five others trespassed into the plaint schedule property and attempted to cut and remove a jackfruit tree worth Rs.60,000/-. After coming to know the same, the appellant-plaintiff rushed to the spot and prevented the respondent-defendant. The appellant-plaintiff therefore filed a suit with a prayer to restrain the respondent-defendant and his men from trespassing into the suit property, committing waste therein and from interfering with the peaceful possession and enjoyment of the suit property by the appellant-plaintiff.

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 15th 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.

5. It is the case of the respondent-defendant that he had sold a jackfruit tree to one Nanu and Rafeeq for Rs. 65,000/- which was in the marginally noted property and they had cut and

removed the tree. It is the case of the respondent-defendant that as per the Commission's Report, the timber was seen outside the suit property on the roadside. It is the case of the respondent-defendant that the father of the respondent-defendant namely Puthenpurayil Othenan was having a property admeasuring 85 × 200 six feet kol by virtue of registered assignment deed dated 10th August 1927. According to the respondent-defendant, his father had given possession of a portion of the property to the tenants and was holding 7.38 acres of land in which his wife and children including the respondent-defendant derived title over the property. It is the further case of the respondent-defendant that a suit bearing O.S. No. 47 of 1983 was filed in respect of a portion of the said property. It is his case that an Advocate Commissioner had prepared plan and report of the disputed property in that suit. It is the case of the respondent-defendant that as per the judgment and decree passed in the said suit as well as by the learned Appellate Court, it was held that the marginally noted

property belonged to the respondent-defendant and other legal heirs of deceased Othenan. It is the case of the respondent-defendant that the legal heirs of the said Othenan had partitioned their property by registered partition deed dated 4th February 1999 and the marginally noted property was allotted jointly to the respondent-defendant, his sister Geetha and brother Ramesan as Item No. 2 in B, C and D schedules of the partition deed. The respondent-defendant has therefore denied the claim of the appellant-plaintiff and prayed for dismissal of the suit.

6. On the basis of the rival pleadings, the following issues came to be framed by the learned trial court:-

(i) What is the correct identity of the plaint schedule property?

(ii) Whether the plaintiff has possession over the plaint schedule property?

(iii) Whether the cause of action alleged is true?

(iv) Whether the plaintiff is entitled to get a decree for injunction as prayed for?

(v) Relief and costs?

7. After considering the evidence led on behalf of the parties, the learned trial judge decreed the suit vide judgment and decree dated 7th March 2003. Being aggrieved thereby, the respondent-defendant preferred an appeal before the Additional District and Sessions Judge, Vadakara being Appeal Suit No. 43 of 2003. The learned Appellate Court dismissed the appeal. Being aggrieved thereby, the respondent-defendant preferred Second Appeal to the High Court. By the impugned judgment and order dated 21st August 2019, the same was allowed by the High Court and the suit is remanded to learned trial court for deciding afresh with liberty to parties to amend the pleading. A review petition was also filed by the respondent-defendant seeking review of the order of the High Court dated 21st August 2019. The said review petition came to be dismissed by the High Court vide order dated 10th February 2020. Being aggrieved thereby, the present appeals.

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***[1], 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.

1 **(2008) 4 SCC 594**

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.

14. In this background, we will have to consider the facts of the present case.

15. From the perusal of the pleadings, it could be seen that it is the case of the appellant-plaintiff that he derives the title to the suit property on the basis of registered assignment deed No. 110 of 1977. It is the appellant-plaintiff's case that he is in exclusive possession of the said property. Per contra, it is the claim of the respondent-defendant that the property shown in the margin of the written statement to an extent of 52 ½ cents belongs to the respondent-defendant and that the appellant-plaintiff was illegally claiming right over the said property. It is his specific case that the property is neither included in the assignment deed nor in the purchase certificate produced by the appellant-plaintiff. It is his further case that the said property belonged to his father Othenan by virtue of assignment from Puthiyottil Kanaran. It is his case that the

title of Puthiyottil Kanaran under Exhibit-A15 is referable to Exhibit-A14 i.e. Document No. 2987 of 1924. It is the specific case of the respondent-defendant that after the death of his father, his mother and children applied for purchase certificate by filing Application being O.A. No. 7014 of 1976 to purchase the *Jenmam* right under Section 72 of the Kerala Land Reforms Act, 1963. It is his case that the Land Tribunal allowed the said application on 9th May 1977. Thereafter, the partition took place between the wife and children of Othenan in the year 1999.

16. The learned trial court in its order has observed that the survey number shown in the plaint schedule is R.S. 28/1A and the survey number of the property claimed by the respondent-defendant in the margin of the written statement is R.S. 30/1. It has further observed that from the report of the Advocate Commissioner it would reveal that the correct survey number of the disputed property would be either R.S. 119/1 or 119/2. However, the learned trial judge observed that the survey

number does not have much relevance in the identification of the disputed property.

17. The learned Appellate Court, while dismissing the appeal, though observed that on inspection, the Advocate Commissioner could see some portion of a revetment in between the plots A and B which has been marked in Exhibit-C1 Plan. It goes on to observe that the said revetment cannot be treated as physical demarcation or boundary because the Advocate Commissioner is definite that he could not see anything to indicate that there had been such a boundary or revetment and that it was impossible to put up such a revetment throughout the length from east to west because it was a sloping rocky area wherein such a revetment cannot be put up. The learned Appellate Court further observed that when the plot A is admittedly in the possession of the appellant-plaintiff, the only finding possible is that the disputed plot B also is in his possession. The learned Appellate Court further observed that if the respondent-defendant claims title over the

disputed property, then the only remedy available to him, is to recover it under the law. It goes on to observe that in the suit for injunction simpliciter, the only material issue is whether the appellant-plaintiff has got actual and exclusive possession over the entire plaint schedule property including the disputed portion.

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***[2]:

2 **(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.

…………………………….J.
[L. NAGESWARA RAO]

…………………………..J.
[B.R. GAVAI]

NEW DELHI;
SEPTEMBER 07, 2021.