

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

Reserved on: 14.09.2022  
Pronounced on: 29.09.2022

**CSA No. 17/2017**

**c/w**  
**CPC 6/2018**

**Shameema Akhter** ... Appellant(s)

Through: Mr M. A. Qayoom, Advocate.

**Vs.**

**Abdul Jabbar Lone** ...Respondent(s)

Through: Mr Ateeb Kanth, Advocate.

**CORAM: HON'BLE MR. JUSTICE M.A. CHOWDHARY, JUDGE**

**JUDGMENT**

1. This Civil 2<sup>nd</sup> Appeal filed by the Appellant was admitted on the following questions of law by this Court vide Order dated 23.05.2018.

- I. Whether in a suit for perpetual injunction, it is necessary for the plaintiff to establish the title or he can succeed in getting the relief of perpetual injunction merely by proving the fact that he is in settled possession of the property in question?
- II. Whether the Appellant Court committed an error of law in deciding the 1<sup>st</sup> Appeal in a cursory manner which reflects non-application of mind?

2. For the sake of convenience, the appellant and respondent are proposed to be referred as plaintiff and defendant respectively as they were before the court of first instance.

3. The factual background to the filing of this Appeal is briefly stated that the Plaintiff filed a suit for permanent injunction against the Defendant before the Trial Court with prayer to pass a permanent injunction restraining the Defendant perpetually from causing any interference into her peaceful and bonafide possession of the suit property which was in her physical possession. The Plaintiff claimed that she along with the defendant purchased 02 kanals and 10 marlas of land at Shamasabad Bemina, Srinagar and that she had paid Rs. 2.00 lacs in three instalments for the purchase of the said land; that she being Government Teacher used to pay her monthly salary to the defendant who happened to be her father; that she had invested huge amount in raising the construction of the house on the land and making necessary improvement thereon;

3.1 Plaintiff claimed that both the parties resided together in the house upto 1995 and the defendant on having been retired from Government service in 1995 left the suit house for his native village Chuntimulla Bandipora, where he had his ancestral property and has been residing there with his son since then; that her marriage took place at sector No. 4 Shamasabad, Bemina Srinagar in the suit house itself and all the relatives including the defendant as well as her siblings and other kith

and kins participated in her wedding; that though the suit house was owned jointly by the parties but the defendant had gifted away his share in the suit property in favour of the plaintiff, as such, she became absolute owner thereof. It was alleged that the defendant after coming back to Srinagar started residing in one of the rooms of the outhouse and was bent upon to dislodge/dispossess the plaintiff from the suit house and had asked her in presence of her relatives to vacate the house.

**3.2** The defendant resisted the claim of the plaintiff in terms of his written statement by stating that the plaintiff has not been residing in the said property for the last 10 years as she was posted Teacher initially at Chuntimulla Primary School in Bandipora, wherefrom, she was transferred to Kunzer, in the year 2002. It was denied that the plaintiff while being posted at Chuntimulla had ever lived in the suit house at Bemina, as being the faraway place; that the plaintiff has wrongly claimed to be owner of the property, that though the defendant has been living in the suit property since 1992, however, he had acquired the title of the suit property by virtue of a sale deed executed on 08.10.1999; that the payment of Rs. 2.00 lacs by the plaintiff to him for the purchase of land measuring 02 kanals 10 marlas or for any other purpose, was denied; that the property was purchased by the defendant in the year 1992 from his own sources of income and thereafter he constructed single storeyed house on the said land from out of his own funds.

- 3.3 Defendant alleged that the plaintiff had entered his house forcibly and was staying there with her second husband, that the plaintiff being married outside the parental home, was not supposed to live in her father's house; that the property was never gifted by him in favour of the plaintiff; that due to rude behaviour of the plaintiff, he was constrained to disinherit her from his movable and immovable property by way of publication; that the possession of the plaintiff over the suit house is of casual nature and she has no right over the suit property, as such, the relief of injunction cannot be granted in her favour.
4. After leading evidence by the parties and after hearing final arguments, the Court of 2<sup>nd</sup> Additional Munsiff Srinagar (hereinafter called Trial Court) vide judgment dated 10.12.2015, dismissed the suit of the plaintiff on the ground that, even though, she was in possession of the suit property, she being not real and true owner of the same is not entitled to the relief of injunction against the true owner.
5. Aggrieved of the judgment and decree dated 10.12.2015 passed by the Trial Court, the plaintiff filed Civil 1<sup>st</sup> Appeal before the Appellate Court, assailing the judgment and decree on a number of grounds. The Court of learned 4<sup>th</sup> Additional District Judge Srinagar (hereinafter called Appellate Court), however, dismissed the appeal filed by the plaintiff in terms of judgment and decree dated 30.11.2017.

6. Having been unsuccessful in view of the concurrent findings recorded by both Trial Court as well as Appellate Court, this Civil 2<sup>nd</sup> Appeal was filed by the appellant/plaintiff and assailed the judgments mainly on the grounds that both the courts, even after recording that plaintiff was in possession of the said property, did not protect her from being evicted/dispossessed forcibly without following due course of law.
7. Mr Qayoom, learned counsel for the appellant/plaintiff argued that the plaintiff is in possession of the suit property since 1992, and, therefore, even if she is treated to be an encroacher, she is in settled possession of the said property and was, therefore, entitled to injunction to the limited effect that she shall not be dispossessed, except in accordance with the law. He has further argued that the Trial Court having recorded that the plaintiff was in possession held that her possession cannot be stated to be lawful possession qua the title of the property and dismissed the plaintiffs' suit illegally, though her suit was only with regard to injunction and not the title of the property. He has also submitted that the Appellate Court without discussing all the issues, decided the Appeal in a slipshod manner, concurring the findings recorded by the Trial Court, against the provision of Rule 31 of Order 41 CPC, which provides that the Appellate Court is under an obligation to discuss each and every issue with the appreciation of evidence led by both sides and then reach to a conclusion for the final disposal of the Appeal.

**7.1** Mr Qayoom, further argued that the plaintiff's suit has been dealt both by the Trial court as well as the Appellate Court as if the suit for title was being tried by them, though the plaintiff's case was essentially that of injunction simplicitor. He next contended that the Trial Court and the Appellate Court seem to have been swayed by the findings recorded with regard to pleadings of contributory purchase and raising of construction by the plaintiff gifting of the share of the defendant in favour of the plaintiff and adverse possession, so as to prove title over the property, being oblivious of the fact that these were incidental pleadings and the core issue to be decided by the Courts was with regard to the factum of possession of the plaintiff over the suit property and her apprehension of being evicted/dispossessed from the suit house by the defendant without following due course of law.

**7.2** Mr Qayoom would further argue that even an encroacher, a trespasser or a licensee can maintain a suit for injunction against the true owner having regard to the settled possession. The plaintiff being in settled possession since the year 2002, as admitted by the defendant which is continuous and in the knowledge of the defendant is entitled to be granted injunction against her dispossession without following due course of law. He has finally prayed that the impugned judgment and decree passed by the Trial Court and affirmed by the Appellate Court,

be set aside and the injunction be granted in favour of the plaintiff.

8. Mr Kanth, learned counsel for the respondent/defendant, ex adverso, with all the vehemence at his command, argued that the plaintiff was a newly recruited school teacher, whileas defendant was working as a senior functionary of the Government, as such, there is no scope or evidence to prove that the plaintiff had purchased the land or raised any construction thereon, out of her meagre income. He has further argued that the defendant had constructed the house after acquiring the land in the year 1992, of which he formally got the title in the year 1999, out of his own resources, and raised the construction of the suit house on that land. The defendant examined many witnesses who had stated that the construction material was purchased from them for raising the construction by the defendant only. He has referred to the statements of DWs Tariq Ahmad Najar, Mohammad Rafiq Dar, Ghulam Rasool Najar and Imtiyaz Ahmad Shah, who had stated that the construction material had been purchased by the defendant from them. Learned counsel for the respondent further argued that during the trial of the case it was not proved that the plaintiff had lawful possession of the suit house. She had laid different claims firstly, purchasing of the property jointly by the parties, secondly, gifting of his share in the house by the

defendant in her favour and thirdly that she was in adverse possession.

**8.1** It has been further argued by Mr Kanth, that the plaintiff had filed the suit for injunction only, and that such a suit is not maintainable for the reason that without relief of declaration, the injunction cannot be sought and also that the injunction cannot be granted against the true owner of the property. He submitted that the plaintiff, has though claimed firstly to be joint owner with the defendant, and then that she had become exclusive owner of the suit house, on the basis of a gift by the defendant or due to adverse possession, and that such a suit is not maintainable and was liable to be dismissed on the point of maintainability only. Mr Kanth, finally, prayed that the appeal without any merit and substance be dismissed and the impugned judgments/decrees be upheld.

**9.** Heard, perused the record and considered.

**10.** Based on rival pleadings, the Trial court framed following issues:

- 1) Whether this court has no jurisdiction to try the present suit? (OPP)
- 2) Whether the suit of the plaintiff is not properly valued and requisite court fee is not paid? (OPP)
- 3) Whether plaintiff has no cause of action? (OPP).
- 4) Whether the defendant has gifted the suit property to plaintiff with his own consent and free will and whether



she is a bonafide and lawful owner of the suit property (house on the land measuring 2 Kanals 10 Marlas comprising Khasra No. 2119/1591/603 under Khat No. 284 in Shamasbad Bemina? (OPP).

5) Whether the defendant is bent upon to dispossess the plaintiff from suit property? (OPP).

6) Whether the defendant has disinherited the plaintiff from his moveable and immoveable property? If so what effect this has on present suit? (OPP).

7) Relief?

8) Whether the plaintiff has made improvements over the said land on electricity, water fittings, cementing and painting? (OPP).

9) Whether the plaintiff was posted away from suit property at any time hence never resided at suit property? (OPP).

10) Whether defendant has sold land at Bandipora to purchase suit land and thereby made all improvements himself? (OPP).

**11.** Issues No. 1 to 3 were decided by the Trial Court vide Order dated 13.12.2007 and rest of the issues were decided vide impugned judgment. It is apparent on the face of the record that in the suit for injunction filed by the plaintiff on her assertion that the defendant had gifted the suit property to the plaintiff with his consent and free will and, thus, as such, she had become bonafide and lawful owner of the suit property (house

on the land measuring 2 Kanals and 10 Marlas comprising of khasra No. 2119/1591/603 in Shamasbad Bemina), issue No. 4 in this behalf was framed and onus to prove this issue was placed on the plaintiff.

**12.** The Trial Court, while discussing the evidence led on issue No. 4, making reference to the statement of the plaintiff that she had failed to state as to when the gift was made in her favour by the defendant, as she denied to remember the date and month when the suit property was gifted to her, though, she had claimed that the gift was made on her wedding and that it was unnatural on her part to not remember the date and month of her marriage; that she further stated that she had acquired ownership of the suit property by way of adverse possession. The plaintiff had also led evidence to the extent that her husband had been staying in the house of the defendant as Khanna Damad, as such, if the suit property was not owned by the defendant, there could be no question of plaintiffs' husband staying as Khanna Damad in the said house. As elaborately discussed by the Trial Court that the plaintiff had failed to prove that she had acquired title of the suit house by any means. The Court, thus, decided this issue having not been proved by the plaintiff.

**13.** The Trial Court while deciding issue No. 5, onus of which was placed on plaintiff to prove that the defendant was bent upon to dispossess the plaintiff from the suit property, returned a finding on the basis of the evidence that the plaintiff had failed

to establish that her possession over the suit property was lawful possession. However, it has also been recorded that the defendant in his written statement and during arguments, had taken stand that it was only because of the Court stay that he had not been able to dispossess the plaintiff and, therefore, it had been established that the defendant wanted to dispossess the plaintiff from the suit property. The Trial Court has thus come to the conclusion, based on the evidence, that the plaintiff was holding the possession of the suit house, but the same was not lawful and had there been no stay, the defendant would have dispossessed her from the suit property.

- 14.** The Appellate Court while discussing the finding returned on issue No. 5 by the Trial Court, observed that the plaintiff had failed to prove any title over the suit property as she has wavered her claim over the suit property, from having made contribution to the purchase of the land and raising of the construction of the house along with the defendant, to half of the share of the defendant having been gifted to her, on the occasion of her second marriage, and to having adverse possession in the knowledge of the defendant. It was further held that the plaintiff wanted to hold the suit property to the detriment of her father, who is bonafide owner of the suit property.
- 15.** So far as contention of learned counsel for the respondent-defendant that the suit for injunction is not maintainable in

absence of any relief of declaration that too against a true owner is concerned, in the considered opinion of this Court, a suit for injunction simplicitor is also maintainable when there is no complicated question of fact or law involved in the case. Also the suit can be maintained by a person against the true owner of the property. This Court finds support to take this view, in view of the law laid down by Hon'ble Supreme Court in case titled ***Jharkhand State Housing Board Vs. Didar Singh and Ors***, reported as ***(2019) 17 SCC 692*** wherein it has been held that though a bare suit for injunction in the absence of declaration relief would be maintainable, as in each and every case where the defendant disputes the title of the plaintiff, it is not necessary that in all those cases the plaintiff has to seek declaratory relief. It was further observed and held that, however, when the defendant raises the 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 permanent injunction. In the case on hand, the plaintiff as well as defendant have made pleadings with regard to title and issues were also raised with regard to title as discussed earlier. Plaintiff did not take any exception to framing of such issues and also led evidence in that behalf. Similarly, the Apex Court in a case titled ***Padhiyar Prahladji Chenaji (D) through LRs versus Maniben Jagmalbhai (D) through LRs & Ors (2022 Live Law (SC) 241)*** has held that an

injunction may be granted, even against the true owner of the property only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to dispossess him except in due process of law. It is true that the title of the property is the basis of relief of possession and the relief of permanent injunction can be said to be a consequential relief and not a substantial relief. Once the plaintiff fails to get any substantive decretal relief with regard to title and possession the relief of injunction can be said to be consequential relief.

16. On perusal of issue No. 4 based on the pleadings of the parties, it is evident that in a suit for injunction there were necessary pleadings regarding title of the suit property and appropriate issues relating to title had been framed. Hon'ble Supreme Court in a case titled *T.V. Rama Krishna Reddy vs M. Mallapora and Anr.*, reported as *AIR 2021 SC 4293* held that where there are necessary pleadings regarding the title of the suit property and appropriate issue relating to title on which parties lead evidence, if matter involved is simple and straight forward, Court may decide upon issue relating to title, even in a suit for injunction, however, it was observed that such cases are exception to normal rule that question of title will not be decided in suits for injunction.
17. The Appellate Court concurred with the finding of the Trial Court, on issue No. 5, which was one of the core issues in the

suit, further, holding that plaintiff's physical possession at present cannot be treated as lawful possession and was permitted possession, having relation between the plaintiff and the defendant as that of daughter and father. The Appellate Court further observed that the possession of the plaintiff, not settled under the touchstone of law, takes status of unauthorized.

18. The Hon'ble Apex Court in a case titled *Anathullah Sudhakar vs P Buchi Reddy (D) by LRs and Ors*, reported as (2008) 4 SCC 594, while deciding the case with regard to injunctions, summarized the principles governing thereto. It is profitable to extract para 21 of the judgment 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 simplicitor.*

*(b) As a suit for injunction simplicitor 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.*

- 19.** In view of the law laid down in the aforesaid judgment, in sub para (d) of paragraph 21, that where the plaintiff is in possession but his title to the property is in dispute or under a cloud or where the defendant asserts title thereto, and there is also a threat of dispossession from the defendant, the plaintiff will have to sue

for declaration of title and the consequential relief of injunction where the title of the plaintiff is under a cloud or in dispute.

**20.** So far as issue No. 4 is concerned, the onus of which was placed on the plaintiff to prove that the defendant had gifted the suit property to her, with his own free will and consent and that she is a bonafide and lawful owner of the suit property i.e., house on the land measuring 2 Kanal 10 Marlas comprising of khasra No. 2119/1591/603 in Shamasbad Bemina, Trial Court after appreciation of the evidence led by both sides and hearing, concluded that the evidence placed on record by the plaintiff was full of contradictions and is not reliable. The issue was decided against the plaintiff holding that she had failed to prove that the property had been gifted to her by the defendant and she had become bonafide owner thereof. Another issue No. 7, onus of which was placed on the plaintiff to prove that she had made improvements over the suit land on the electricity, water fitting, cementing and painting, was also decided against her.

**21.** The Trial Court while disposing of the suit filed by the plaintiff observed that the plaintiff has changed her claims over the suit property from contributing to purchase the land and construction of house thereon, having been allegedly gifted by the defendant to the plaintiff and having acquired the ownership by virtue of adverse possession. The Trial Court also observed that from the perusal of the evidence on record, it transpires that both the parties are in possession of the suit property as the defendant had



also admitted in his written statement that the plaintiff's possession is of casual nature being the mere trespasser. The Trial Court, however, decided the case that the plaintiff was not entitled to the relief of injunction as she had failed to prove her possession over the suit property having no right or interest therein.

22. The Appellate Court concentrated its consideration on the claims of the plaintiff with regard to her claim of being lawful owner and held that the plaintiff had failed to prove any of her claims vis-à-vis to the suit property and held that plaintiff's physical possession at present cannot be treated as lawful possession, which was permitted as per the relation of being daughter of the defendant, and that the plaintiff's possession was not settled under the touchstone of any law and she had the status of being unauthorized.

23. Though, it is evident from the judgments relied up by appellant's counsel that the suit for injunction can be brought even against the true owner, however, the Hon'ble Apex Court in T.V. Rama Krishna Reddy case (supra) held that where there are necessary pleadings and appropriate issues relating to title, on which parties lead evidence, if matter involved is simple and straight forward, Court may decide upon these issues regarding title even in a suit for injunction. Apex Court had bracketed such cases as exception to the normal rule. It cannot be said that dispute raised by defendant with regard to title is not genuine, nor can it be said

that title of plaintiff over the suit property is free from cloud. Issue no. 4 with regard to title after pleadings and leading evidence was decided after full-fledged trial on the basis of evidence that was led by parties in support of their rival claims. There are concurrent findings of both the Courts below with regard to the fact that the plaintiff had failed to prove her title over the suit property. Plaintiffs' suit for injunction was simplicitor and was concerned only with possession, normally the issue of title was not directly and substantially in issue, but, there where necessary pleadings regarding title and appropriate issue relating to title, on which parties led evidence, and the matter involved was simple and straight forward, the Court decided upon the issue regarding the title, even in a suit for injunction.

- 24.** Unfortunately the case on hand is between daughter and father, the daughter claims the suit property with different claims such as having contributed in the purchase of land including raising of the house, gifting of the house by the father to her at the time of her second wedding and the adverse possession to the knowledge of the defendant, whereas, the father having been estranged by not reconciling to the choice of second marriage by the daughter has taken plea that he had disinherited her from the property. Since the pleadings with regard to title were raised by both the sides, therefore, even in a suit for injunction, issues with regard to title were framed. The plaintiff utterly failed to prove the issue

with regard to her title over the suit house, as has been concurrently decided by the Trial Court as well as Appellate Court. The Plaintiff, though, stated she had been in a possession of the suit property however, being daughter of the defendant, she had been enjoying the suit property gratuitously and under the plea of perpetual injunction she cannot be allowed to restrain the defendant, who happens to be her father, from use of his hard-earned property.

- 25.** The claim with regard to injunctions in civil suits is based on equitable relief, the law in order to do equity to one party will never do inequity with another party, and therefore, in cases wherein there is even equal equity, the law shall prevail. Settled possession means in possession without any litigious or interrupted possession, but does not include a tenant, licensee or permissive user. Due to the conflicting claims of the plaintiff with regard to her title over the suit property including the adverse possession no conclusion can be drawn that she was in settled possession of the property. The circumstances of the case and more particularly the relationship of daughter and father between the parties suggest that the suit house was allowed to permissive use gratuitously to the plaintiff by the defendant being her father. The injunction cannot be granted when the plaintiff, on the basis of finding on the issue with regard to title based on pleadings, is found to be in unlawful possession, even in a case of injunction simplicitor. The injunction may be

granted, even against the true owner of the property only when the person seeking the relief is in lawful possession.

**26.** Settled possession means such possession over the property which has existed for a sufficiently long period of time and has been acquiesced too by the true owner and a possession which has not matured into settled possession can be obstructed or removed by the true owner, even by using necessary force. In this case, even if the possession claimed by the plaintiff is for a longer period but the same cannot be said to be acquiesced by the true owner as this has been a case of the plaintiff that the defendant always wanted her to be evicted. No one acquires title of the property if he or she was allowed to stay in the premises gratuitously, even by allowing possession of years or decades such person would not acquire any right or interest in the said property. The Courts below were justified in not protecting the possession of the plaintiff, who was allowed to live in the premises as a close relative, being daughter of the defendant.

**27.** Having regard to the discussion made hereinabove, it is held that neither the Trial Court has committed any error by holding that the plaintiff was not entitled to the relief of injunction against the defendant nor the Appellate Court affirming the decision of the Trial Court.

28. For the foregoing reasons and observations made hereinabove, the substantial questions of law framed by this Court are answered as under:

1. In a suit for perpetual injunction, it is necessary for the plaintiff to establish the title for grant of perpetual injunction, claiming settled possession over the property in question when necessary pleadings and appropriate issues relating to title, on which the parties lead evidence, the plaintiff is under an obligation to establish the title for the relief of perpetual injunction.
2. The Appellate Court though has not exhaustively discussed the pleadings, the evidence and the issues as required by the Appellate Court, but the same cannot be said to be an error in law or non-application of its mind.

29. As a sequel to the discussion made hereinabove and foregoing reasons, the Civil 2<sup>nd</sup> Appeal, for being devoid of any merit and substance, is *dismissed*. Interim direction, if any, shall stand vacated. The impugned judgments and decrees passed by the Courts below are, thus, upheld. There shall be no order as to costs.

**CPC 6/2018**

30. In view of the dismissal of the Civil 2<sup>nd</sup> Appeal, the Contempt Petition shall stand settled and proceedings are dropped.

31. Record be sent back.

32. *Disposed of.*

**(M.A. CHOWDHARY)  
JUDGE**

**SRINAGAR**  
**29.09.2022**  
Hilal Ahmad

*Whether the Judgment is reportable: Yes/No*