

APHC010020852001



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3368]

MONDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

SECOND APPEAL No: 611/2001

Between:

Fakruddin Sab

...APPELLANT

AND

Smt Khairnubi

...RESPONDENT

Counsel for the Appellant:

1.O MANOHER REDDY

Counsel for the Respondent:

1.N RANGA REDDY

The Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

S.A.No.611 OF 2001

Between:

Fakruddin Sab, S/o.Khasim Sab,
Muslim, Aged 79 years,
R/o.D.No.5-8-188-A, Rahamathpur,
Hindupur, Anantapur District.

.... **APPELLANT**

Versus

Smt.Khairunbi, W/o.Late Nayathbaig,
Muslim, Aged 94 years,
R/o.Anantapur, Now C/o.Driver Khaleel,
D.No.5-8-10, Rahamathpur,
Hindpur, Anantapur District.

.... **RESPONDENT**

DATE OF JUDGMENT PRONOUNCED : **24.03.2025**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Judgment? Yes/No

JUSTICE B.V.L.N.CHAKRAVARTHI

*** HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ S.A.No.611 OF 2001

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Hindpur, Anantapur District.

.... RESPONDENT

! Counsel for the Appellant : Sri O.Manohar Reddy

^ Counsel for the Respondent : Sri N.Ranga Reddy

< Gist:

> Head Note:

? Cases referred:

1. (2008) 4 SCC 594

2. AIR 2021 SC 4293

This Court made the following:

THE HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

SECOND APPEAL No.611 OF 2001

J U D G M E N T :

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, is filed by the appellant/respondent/plaintiff assailing the decree and judgment, dated 05.02.2001, of the learned Senior Civil Judge, Hindupur, passed in A.S.No.26 of 1998.

02. The appellant/plaintiff filed O.S.399/1998 on the file of learned Junior Civil Judge's Court, Hindupur, against the respondent/defendant seeking the relief of permanent injunction, restraining the defendant and her men from interfering with the peaceful possession and enjoyment of the schedule mentioned plot bearing No.165 measuring 30x50 feet in S.No.118/2, 119/1-B and 119/4 within the boundaries, east-plot No.164 west and north-road and south-plot No.165-A and other houses. The learned trial Court vide judgment and decree dated 15.12.1997 decreed the suit. The respondent/defendant filed appeal in A.S.26/1998 on the file of learned Senior Civil Judge, Hindupur, challenging the judgment and decree of the learned trial Court.

03. The learned Senior Civil Judge, Hindupur, vide judgment and decree dated 05.02.2001 allowed the first appeal with costs, and thereby dismissed the suit in O.S.399 of 1998 on the file of learned Junior Civil

Judge, Hindupur.

04. Heard, Sri O.Manohar Reddy, learned Senior Counsel appearing for the Appellant/Plaintiff and Sri N.Ranga Reddy, learned counsel appearing for the Respondent/Defendant. Perused the material on record.

05. The appellant is the plaintiff. The respondent is the defendant. The parties in this Second Appeal shall hereinafter be referred to as arraigned in the Original Suit, for convenience and clarity.

06. The case of the plaintiff is that the Tahsildar of Hindupur granted a Patta for the suit schedule property on 05.05.1979; The plaintiff constructed house in the said site in the year 1966 prior to granting of Patta; Basing on possession, Patta was issued in favour of the plaintiff in the year 1979; A portion of the house was subsequently demolished to form a layout and road; The plaintiff repaired the remaining portion of the house; Boundaries were changed due to formation of layout and road; The defendant is a resident of Anantapur; The defendant and her sons constructed houses at Hindupur and let out them; The defendant visiting Hindupur to collect rents; the defendant falsely claiming right over the property of the plaintiff, and wanted to make construction in the suit schedule site. Hence, the suit for permanent injunction.

07. The case of the defendant is that the plaintiff is staying in the house bearing D.No.5/8/188-A; The entire plot No.165 measuring 30x50 feet was not assigned to the plaintiff; Only western half belongs to the plaintiff; The eastern half belongs to the defendant; The defendant has been in possession of the eastern half of the plot; The plaintiff has furnished false boundaries; The plaintiff has no right or possession over eastern half of the plot measuring 26x30 feet; The defendant constructed a hut in the eastern half; Later, her hut was dilapidated; When the defendant was trying to rebuilt it, plaintiff filed the suit and obtained interim injunction.

08. Taking into consideration of the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled for permanent injunction in his favour?
2. Whether the suit schedule property assigned to the defendant by the revenue authorities?
3. Whether the suit for bare injunction without prayer for declaration is maintainable?
4. To what relief?

09. At trial, on behalf of the plaintiff, P.W-1 and P.W-2 were examined and Exs.A-1 to A-7 were marked. On behalf of the defendant, D.W-1 to

D.W-3 were examined and Exs.B-1 to B-11 and Ex.C.1 & C.2 were marked.

10. The learned trial Court on consideration of the above evidence placed by the respective parties, decreed the suit granting permanent injunction in favour of the plaintiff. The defendant preferred A.S.26/1998 on the file of learned Senior Civil Judge, Hindupur, challenging the judgment and decree of the learned trial Court.

11. The learned First Appellate Court on consideration of the evidence on record referred above, allowed the appeal, holding that the defendant is entitled to claim right, title and possession over the vacant site measuring 25x30 feet in plot No.165-A towards eastern side vide Ex.B-1 and that the plaintiff is also entitled to claim right, title and possession over the tiled house within the measurements of 30x25 feet towards western side in plot No.165 vide Ex.A-1. Accordingly, granted permanent injunction in favour of the plaintiff restraining the defendant from interfering with the peaceful possession and enjoyment of the schedule mentioned site measuring 30X25 feet towards western side of plot No.165 vide Ex. A-1. Further, granted permanent injunction in favour of the defendant also restraining the plaintiff from interfering with the possession and enjoyment of defendant over the site measuring 25x30

feet towards western side in plot No.165-A vide Ex.B-1 subject to payment of court fee within two months from the date of decree.

12. Challenging the above judgment of the learned First Appellate Court, the plaintiff filed the Second Appeal.

13. On behalf of the Appellant/Plaintiff the following substantial questions of law are raised in the Second Appeal:

1. Whether Court can decide and declare title of the parties in a suite for injunction simpliciter based on possession?

2. Whether the Court can decide the validity of Patta issued by the revenue authorities in the absence of challenge by the parties?

3. Whether the Appellate Court can declare the title of the plaintiff and defendant without any issue?

14. **QUESTIONS No.1 TO 3:**

The learned counsel for the appellant/plaintiff would submit that admittedly the suit was filed for injunction simpliciter basing on the possession and title of the plaintiff. The issue was whether the plaintiff is entitled for permanent injunction based on possession

15. The learned trial Judge basing on the evidence found that the plaintiff has been in possession of the suit schedule property, and

accordingly, decreed the suit for permanent injunction.

16. The defendant challenged the judgment and decree of the learned trial Court in the First Appellate Court. But, the First Appellate Court went beyond the issues and evidence, decided the title of the respective parties over the suit schedule property and declared their rights in the suit schedule property and granted permanent injunction in favour both parties vice versa, though no counter claim was made by the defendant to declare title or for injunction, and also without any prayer by the plaintiff to declare the title.

17. He would further submit that the judgment of the learned First Appellate Court is contrary to the settled legal position that in a suit for injunction simpliciter, the question relating to title can only be gone into incidentally with reference to possession, and it cannot be decided as a main issue and that the Court shall not declare the title of the respective parties in such suit. Further, the learned First Appellate Judge without any counter claim filed by the defendant to decide and declare the title of the defendant and for injunction in favour of the defendant, declared the tile and granted injunction Therefore, the decree and judgment of the learned First Appellate Court is not sustainable in law.

18. The learned counsel for defendant would submit that there are no grounds to interfere with the judgment and decree of the learned First Appellate Court.

19. The Hon'ble Apex Court in the case of **Anathula Sudhakar Vs. P.Buchi Reddy (dead) by L.Rs and Others**¹, and in the case of **T.V.Ramakrishna Reddy Vs. M.Mallappa and another**², held as follows:

“It is the settled legal position that in a suit for injunction simpliciter, possession is the issue. Normally, the issue of title will not be directly and substantially in issue in a suit for injunction simpliciter. Therefore, 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 arises for consideration, as without a finding thereon, it will not be possible to decide the issue of possession. But a finding on title cannot be recorded in a suit for injunction simpliciter. However, if there are necessary pleadings and appropriate issue regarding title and parties led evidence, if the matter involved a simple and straight forward, 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

¹ (2008) 4 SCC 594

² AIR 2021 SC 4293

of title will not be decided in suits for injunction simpliciter. 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. 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”.

20. Undisputedly, the suite in the case on hand is for injunction simpliciter, basing on possession. The learned trial Court decreed the suit believing the case of the plaintiff that the plaintiff has been in possession of the suit schedule property. Admittedly, no issue on title of the plaintiff was settled, asking the plaintiff to lead evidence to prove title. Therefore, when there is no issue of title, suite for injunction shall be decided basing on possession. But the question on title may be gone into incidentally when possession has to be established on the basis of

title to the property, as in the case of vacant sites. A finding on title cannot be recorded as a matter of fact in a suite for injunction simpliciter, without necessary pleadings, proper issue and parties placing the evidence.

21. In the case on hand, there are no necessary pleadings with respect to title of the parties. No appropriate issue was settled regarding title. Therefore, the parties are not expected to lead evidence with regard to title. Hence, it is not a case of exceptional nature to decide and declare the title of the parties, though it is a suite for injunction simpliciter. Unfortunately learned appellate judge oblivious of the above settled legal principles decided and declared not only the title of the plaintiff but also of the defendant. He also granted decree for title and injunction in favour of the defendant without any counter-claim for such relief.

22. Therefore, the judgment and decree passed by the learned First Appellate Court in A.S.No.26 of 1998 on the file of the learned Senior Civil Judge, Hindupur, is liable to be set aside, and the matter be remitted to the learned First Appellate Court to consider the appeal afresh, and dispose of the same as per law, after hearing both sides. Since the appeal is of the year 1998, with a direction to dispose of it,

within a period of three (03) months from the date of receipt of copy of the judgment.

23. In the result, the Second Appeal is allowed. The judgment and decree passed by the learned First Appellate Court in A.S.No.26 of 1998 on the file of the learned Senior Civil Judge, Hindupur, is set aside, and the matter is remitted to the learned First Appellate Court to consider the appeal afresh, and dispose the same as per law, after hearing both sides. Since the appeal is of the year 1998, it shall be disposed of as expeditiously as possible, preferably not later than three (03) months, from the date of receipt of copy of the judgment. Both parties are directed to cooperate with the First Appellate Court for expeditious disposal of the appeal. There shall be no order as to costs.

As a sequel, Interlacutory applications pending, if any, shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI.

24.03.2025

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THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

S.A.No.611 OF 2001

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24th March, 2025

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