



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6075 OF 2016

SANJAY PALIWAL AND ANOTHER

...APPELLANT(S)

VERSUS

**BHARAT HEAVY ELECTRICALS LTD.
THROUGH ITS EXECUTIVE DIRECTOR**

...RESPONDENT(S)

JUDGMENT

ARAVIND KUMAR, J.

1. The Appellants before this Court are the unsuccessful Plaintiffs in a suit¹ for Mandatory Injunction, and the Respondent is the Defendant in the suit. (*The parties hereinafter are referred to by their respective ranks in the suit*). The Trial Court² decreed the Suit filed by the Plaintiffs and the First Appellate Court³ confirmed the judgement and decree of the Trial Court and dismissed the Appeal⁴ filed by the Defendant. Aggrieved by the concurrent judgment and decree of the Trial Court and the First Appellate Court, the Defendant

¹ O.S. No. 27 of 1994. Hereinafter referred to as 'the Suit'.

² COURT OF II ADDITIONAL CHIEF JUDICIAL MAGISTRATE/ADDITIONAL CIVIL JUDGE, HARIDWAR.

³ COURT OF DISTRICT JUDGE, HARIDWAR PRESIDING OFFICER: SHRI V.K. JAIN.

⁴ Civil Appeal No. 33/2001.

filed a Second Appeal⁵ before the High Court⁶, which came to be allowed by judgment and decree dated: 07.08.2012 and dismissed the suit of the Plaintiffs. Hence the Plaintiffs have filed this Appeal.

BRIEF FACTS:

2. The case of the Plaintiffs is as follows:

- 2.1.** The plaintiffs, partners in Vaishali Builders, had purchased a parcel of land measuring 15 Biswa, Khewat No. 8/4, Khatauni No. 36, Khasra No. 436, situated in Ahmedpur Karachh, Jwalapur, District Haridwar⁷, through a registered sale deed dated 06.01.1992 from the previous owners, Laxminarayan Jha (zamindar/landholder) and Bashir Khan (cultivating tenant of Shreni-3). After the purchase, the plaintiffs' firm name was duly mutated in the revenue records, and they had remained in ownership and possession of the lands since then.
- 2.2.** The disputed land was depicted as ABCD in the site map attached to the plaint (which is noted herein below), with specified measurements i.e. ABCD is 690 "Kari" and length of AC and BD is 26 "Kari". It was bounded on the north, south, and west by lands belonging to the defendant and others, while a pucca road lay on the eastern side. Plaintiffs claimed access to this road has been essential for the plaintiffs' use and enjoyment of their land.
- 2.3.** The dispute arose when the defendant constructed a boundary wall along the pucca road, specifically between points C and D, which blocked the plaintiffs' access. The plaintiff's had repeatedly requested the defendant to remove the obstruction, but the defendant refused, thereby giving rise to the cause of action. According to the plaintiffs,

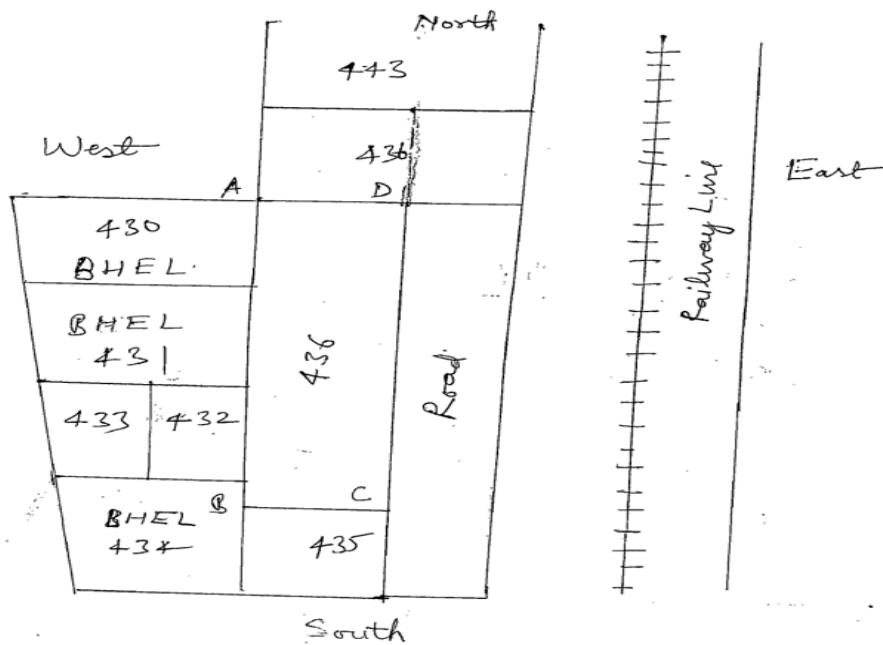
⁵ Second Appeal No. 32 of 2004.

⁶ High Court of Uttarakhand at Nainital.

⁷ Hereinafter referred to as the Disputed Land.

the defendant did not have the right to construct such a wall in a manner that obstructed their approach to the road.

2.4. Consequently, the plaintiffs filed a suit before the competent court at Haridwar seeking a decree of mandatory injunction directing the defendant to remove the boundary wall between points C and D, or for the court to arrange its removal if the defendant failed to comply. The suit had been valued at Rs. 500/- as per the estimated cost of removal, and the requisite court fees was paid thereon. The plaintiffs also sought costs of the suit and any other relief the court deemed appropriate.



3. On notice, the Defendant appeared in the matter contested the case, contending as follows:

3.1. The defendant admitted only that its boundary wall had existed for about thirty years and meets the road on the west. It was asserted that the plaintiffs have no cause of action, and that the plaintiffs have neither possession nor any right over the disputed land, which has allegedly been within the defendant company's territory for decades. The

defendant contended that the wall complained of has existed for around thirty years and that the plaintiffs' suit for injunction is not maintainable. It was further argued that the plaintiffs' partnership firm is unregistered, attracting the bar of Section 69 of the Partnership Act.

3.2. The defendant also disputed the plaintiffs' title, contending that Laxminarayan Jha and Bashir Khan were neither owners nor cultivators of the land marked ABCD, and the alleged sale deed dated 06.01.1992 is false. According to the defendant, the disputed land was acquired by the State Government for its establishment and possession was officially handed over to the company, therefore, neither the plaintiffs nor their alleged predecessors ever had ownership or possession over the same. The defendant alleged the map filed with the plaint is incorrect, contending that Khasra No. 436 is much larger than claimed, and argued that an injunction suit is barred under Section 41(h) of the Specific Relief Act because an alternative remedy of seeking possession is available.

4. The trial court after framing issues and evaluating the evidence tendered by both the parties, vide Judgment and Decree dated: 22.03.2001, decreed the suit filed by the Plaintiffs for the following reasons:

4.1. Primarily on the finding that plaintiffs had successfully established their title and possession over the disputed land forming part of Khasra No. 436, Khewat No. 8/4. The plaintiffs proved their ownership through a registered sale deed dated 06.01.1992 and it was supported by revenue records, including Khatauni and Khasra entries. The oral testimony of PW-1, coupled with documentary evidence, revealed that possession was delivered at the time of sale and continued thereafter. Crucially, the reports of the Revenue Inspector, Amin, and Local Commissioner consistently identified the disputed portion (marked in

light red) as belonging to the plaintiffs, thereby corroborating their case and negating the defendant's plea of exclusive possession.

- 4.2. Secondly, the Court rejected the defendant's claim that disputed land had been acquired by the State and was in the possession of the defendant company. The defendant's own witness made admissions that portions of Khasra No. 436 were not in the possession of the defendant and that adjoining lands such as Khasra Nos. 433 and 435 were distinct. These admissions, read with the Amin's affirmed report and revenue records, clearly established that plaintiffs' land was not part of the road or acquired area. The Court therefore held that plaintiffs were owners in possession and the defendant had unlawfully raised a boundary wall on the eastern side, obstructing the plaintiffs' access to the road.
- 4.3. Thirdly, the objection regarding maintainability of suit raised under Section 69 of the Partnership Act was repelled. Although the firm Vaishali Builders was admittedly unregistered, the Court held that suit was not based on enforcement of a contractual right but was a common law action seeking protection of property rights by way of mandatory injunction. Relying on settled legal principles, the Court concluded that suit filed by partners of an unregistered firm was maintainable. Consequently, the statutory bar under Section 69 was held inapplicable, and the issue was decided in favour of the plaintiffs.
- 4.4. Finally, on the issues relating to relief of mandatory injunction and bar under Sections 38 and 41 of the Specific Relief Act, the trial court found that plaintiffs' right to access to public road was essential for the enjoyment and utility of their property. Evidence revealed that earlier there existed only a wire fencing, leaving a passage, which was later replaced by a wall that completely blocked access. Such obstruction amounted to a continuing wrongful act, justifying the grant of a

mandatory injunction. Since denial of relief would render the plaintiffs' land virtually unusable, the Court held it is just and equitable to direct removal of the wall.

- 5.** The Defendant Company filed an appeal⁸ before the First Appellate Court, challenging the judgment and decree of the Trial Court which came to be dismissed vide judgment and order dated: 30.01.2004 and confirmed the judgment and decree of the Trial Court.
- 6.** Aggrieved by the Judgment and decree of the Trial Court and the First Appellate Court, the Defendant filed a Second Appeal before the High Court. The High Court after framing substantial question of law, has passed the impugned order by setting aside the judgment and decree of both the courts below and dismissing the suit filed by the Plaintiffs on the grounds:
 - 6.1.** A decisive legal correction has to be made with regard to the maintainability of a suit for bare mandatory injunction. It held that construction of a wall on disputed land amounts to trespass and dispossession, for which the efficacious remedy is a suit for possession. Since the plaintiffs sought only removal of the wall without claiming possession, the suit was held barred under Section 41(h) of the Specific Relief Act, 1963. It was further held that both the Trial Court and the First Appellate Court committed a legal error in granting injunction when the proper remedy was for ejectment or seeking possession, and answered the substantial question of law in favour of the defendant.
 - 6.2.** Secondly, the High Court supplied additional reasoning on the nature of title flowing from the sale deed, clarifying that a Maurusee Kashtkar (Class VIII hereditary tenant) has no transferable ownership rights. Although the sale deed was executed jointly by Bashir Khan (tenant) and Laxminarayan (one of the recorded co-owners), the Court made it

⁸ Civil Appeal No. 33/2001.

clear that ownership could pass only to the extent of the co-owner's share, and not that of the tenant. This clarification substantially diluted the conclusiveness of the plaintiffs' title, which had been assumed by the courts below without examining the limits of transferability under the revenue law.

- 6.3.** Thirdly, the High Court found fatal factual defects in the proof of location of the disputed wall or identity of said wall. It held that mandatory injunction could not be granted unless it was conclusively shown that wall stood on the exact portion of land purchased by the plaintiffs. The Court noted that the Amin's report relied upon by the courts below was not proved; the plaint map did not disclose the length or width of the wall, and the report dated 28.09.1992 referred to Khasra No. 438 instead of 436, rendering it unreliable. In the absence of precise measurements and identification, the decree for demolition was held to be legally unsustainable.
- 6.4.** Finally, while affirming that the suit was not barred under Section 69 of the Partnership Act, the High Court held that this finding alone could not save the decree. On cumulative consideration of (i) the bar under Section 41(h) of the Specific Relief Act, (ii) lack of proof of wall location or its identity and, (iii) infirmities in title of Plaintiffs, the High Court concluded that Trial Court and the First Appellate Court had erred in law. Consequently, the decree for mandatory injunction was set aside and the suit came to be dismissed, marking a complete reversal of the earlier concurrent findings.
- 7.** Aggrieved by the judgment and order of the High Court, the Original Plaintiffs have filed this Civil Appeal.

SUBMISSION OF THE PARTIES

- 8.** Learned Senior Counsel, S.R.Singh, appearing for the Plaintiffs - Appellants contended as follows:
- 8.1.** Plaintiffs had filed a suit for mandatory injunction against the defendant for removal of a wall raised by the defendant, which was concurrently decreed by both the Trial Court and the First Appellate Court. The High Court, in exercise of its power under Section 100 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') could not have went into the re-appreciation of the facts.
- 8.2.** He has further contended that principal ground the Trial Court and the First Appellate Court, on a thorough appreciation of pleadings and evidence, concurrently held that plaintiffs are the owners and in settled possession of the suit land forming part of Khasra No. 436, and that respondent-BHEL has neither title nor possession over it. It was conclusively found that Khasra No. 436 was never acquired for BHEL, a fact reinforced by the admission of BHEL's own witness that possession of the relevant old khasra numbers was never handed over to the company and that the land remained under cultivation. Consequently, the wall raised by BHEL was held to be illegal and liable to be removed.
- 8.3.** It was further contended that High Court committed a manifest error in law by allowing the second appeal and setting aside these concurrent findings without dealing with them. It is urged that the High Court re-appreciated the evidence and substituted its own findings on ownership and possession, despite the settled limitation under Section 100 of CPC that interference with concurrent findings of fact is not permissible in second appeal.

- 8.4.** He further contended that, the High Court wrongly applied Section 41(h) of the Specific Relief Act by holding the suit for injunction to be barred on the premise that the plaintiffs had not sought possession. He contended that this finding of the High Court is wholly erroneous since both the courts had categorically held that plaintiffs were already in possession of the suit property, making a prayer for possession was not at all warranted.
- 8.5.** He contended that the impugned judgment is therefore alleged to be vitiated by jurisdictional error, misapplication of law, and disregard of binding concurrent factual findings, warranting interference by this Court.
- 8.6.** The Learned Senior Counsel relied on the judgments of this Court in ***Sant Lal Jain vs. Avtar Singh***⁹ and ***Jospeh Severance and Others vs. Benny Mathew and others***¹⁰ to contend that the suit for mandatory injunction is maintainable without seeking for the possession of the property.
- 9.** Shri. Shailesh Madiyal, Learned Senior Counsel appearing for the respondent/ defendant defended the impugned judgment and contended as follows:
- 9.1.** The Appeal is not maintainable and deserves dismissal because the Hon'ble High Court correctly held that a suit seeking mandatory injunction for removal of a wall, without claiming the consequential relief of possession, is barred under Section 41(h) of the Specific Relief Act, 1963. The High Court's interference was based on a pure question of law, and therefore no error can be attributed to it for allowing the second appeal.

⁹ (1985) 2 SCC 332.

¹⁰ (2005) 7 SCC 667.

- 9.2.** He further contended that, Appellants/Plaintiffs have wrongly alleged that the High Court substituted findings of fact. In reality, the High Court decided substantial questions of law, particularly relating to the statutory bar under Section 41(h) of the Specific Relief Act. Such determination does not amount to reappreciation of evidence but is a lawful exercise of jurisdiction in second appeal.
- 9.3.** He further contended that, suit itself was liable to fail as the Appellants could not identify the specific 15 biswa of land allegedly purchased out of the large Khasra No. 436. In the absence of clear identification, dimensions, or measurement of the disputed land and wall, no injunction could legally be granted. The Trial Court and the First Appellate Court committed an error in decreeing the suit despite this fundamental defect.
- 9.4.** He further contended that the grounds raised in the Appeal are misconceived, factual in nature and does not warrant any interference by this Court as the impugned judgment of the High Court is just, proper, and in accordance with law and facts and therefore he sought for dismissal of the Appeal.
- 9.5.** He further relies on the judgment of this Court in case of *Anathula Sudhakar vs. P. Buchi Reddy (Dead) by Lrs. And Others*¹¹ to contend that, when there is cloud regarding ownership and possession of the property, the suit for mandatory injunction is not maintainable.
- 10.** Having heard the Learned Senior Counsels appearing for the parties and after perusal of the record available, the following questions arises for considerations:
- I. *Whether the Judgment and Decree of dismissal of the Suit passed by the High Court warrants interference?*

¹¹ (2008) 4 SCC 594.

II. What Order?

RE-ISSUE -I

11. Before proceeding to analyse the judgment, it would be apposite to reiterate the limited facts which stand admitted and are not in dispute between the parties:

- (a) The plaintiffs purchased a parcel of land admeasuring 15 biswa, forming part of Khewat No. 8/4, Khatauni No. 36, Khasra No. 436, from Laxminarayan Jha, the recorded zamindar/landholder, and Bashir Khan, a cultivating tenant of Shreni-III, by a registered sale deed dated 06.01.1992.
- (b) The existence of a wall within Survey/Khasra No. 436 is admitted.

Save and except the aforesaid two facts, no other fact is admitted, and all other facts are in serious dispute between the parties.

12. *Firstly*, upon a perusal of the respective cases set up by the plaintiffs and the defendants, it is evident that plaintiffs asserted their title over the disputed property on the basis of the sale deed; whereas the defendants expressly disputed the said title. Even at face value, this assertion and denial establish a clear dispute regarding title over the disputed property, which constitutes a material issue requiring adjudication in the present case. *Secondly*, the plaintiffs claim to be in possession of the disputed property, while the defendants assert that they themselves are in possession thereof would clearly indicate, there exists a serious dispute as to possession of the disputed property. *Thirdly*, there is also a dispute with regard to the exact location and identification of the portion of land comprised in Khasra No. 436, within which the property allegedly purchased by the plaintiffs is stated to be situated.

All the aforesaid aspects namely, the dispute as to title, possession, and identity/location of the property are required to be borne in mind by this Court while considering whether the plaintiffs are entitled to the relief of mandatory injunction, as prayed for.

13. Having examined both the disputed and undisputed facts, as noted hereinabove, this Court now proceeds to consider the reasons which weighed with the High Court in exercising its limited jurisdiction under Section 100 of the CPC. Although the reasons for allowing the second appeal filed by the defendants have already been adverted to, the same are reiterated hereinafter for the purpose of a focused analysis. While dealing with the question as to whether the suit was barred under Sections 38 and 41 of the Specific Relief Act, 1963, the High Court held that a suit seeking the relief of injunction, without claiming the consequential relief of possession, is barred by Section 41(h) of the said Act. It is apposite to notice the context in which such a conclusion was arrived at by the High Court. The High Court observed that if a wall is constructed by the defendant over the disputed property claimed to be owned by the plaintiffs, such construction amounts to trespass resulting in dispossession of the plaintiffs from that portion of the property. In such circumstances, the appropriate remedy available to the plaintiffs was to institute a suit for possession, in addition to or instead of seeking an injunction. With regard to the issue of ownership, the High Court held that although there existed a sale deed in favour of the plaintiffs and Laxminarayan possessed a transferable title, Bashir Khan, being a Maurusee Kashtkar (hereditary tenant), was not competent to convey valid title to the plaintiffs.

13.1. Upon examining the reasoning adopted by both the trial court and the first appellate court in granting a decree of mandatory injunction, the High Court expressed its inability to concur with the said finding and

remarked that “*it is strange*” as to how such relief had been granted in the absence of any cogent evidence establishing the exact location of the portion of land purchased by the plaintiffs within Khasra No. 436, or demonstrating that the wall in question fell within the said purchased portion. The High Court further discarded the report relied upon by the plaintiffs for establishing the location of the disputed property, holding that the same could not be safely relied upon.

- 14.** Having reproduced the reasons assigned by the High Court, we now proceed to examine whether the said reasons suffer from any legal infirmity warranting interference by this Court. Learned Senior Counsel appearing for the plaintiffs has placed reliance on the decisions of this Court in *Sant Lal Jain v. Avtar Singh* (supra) and *Joseph Severance and Others v. Benny Mathew and Others* (supra) to contend that a suit for mandatory injunction is maintainable even in the absence of a prayer for possession. Per contra, learned Senior Counsel appearing for the defendants has placed strong reliance on the decision of this Court in *Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs and Others* (supra), to contend that where a serious cloud over both the title and possession of the disputed property claimed by the plaintiffs exists, thereby rendering a suit for injunction simpliciter not maintainable.
- 15.** Before we go to examine the applicability of these cases to the facts in issue, we would like to first extract Section 41(h) of the Specific Relief Act, which reads as follows:

“41. Injunction when refused.— An injunction cannot be granted—
(a) to (g).....

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
(ha) to (j).....”

- 16.** As is evident from Section 41(h) of the Specific Relief Act, 1963, one of the statutory grounds for refusal of an injunction is the availability of an equally efficacious remedy. This rule, being expressly prescribed by the statute, circumscribes the discretion of courts in granting injunctive relief where such an alternative remedy exists. The expression “*equally efficacious remedy*”, as rightly explained by the High Court, denotes a remedy which would place the Plaintiffs in the same position in which he would have been had the relief of injunction not been sought. There are, however, limited categories of cases where a suit for mandatory injunction, by itself, may constitute an equally efficacious remedy. The factual matrix in ***Sant Lal Jain v. Avtar Singh*** (supra) and ***Joseph Severance and Others v. Benny Mathew and Others*** (supra) are illustrative of such situations, where the grant of a mandatory injunction was found to be appropriate in the absence of a prayer for possession.
- 17.** Learned Senior Counsel appearing for the plaintiffs has placed considerable reliance on the decision of this Court in ***Sant Lal Jain v. Avtar Singh*** (supra) to contend that, in the facts and circumstances of the present case, a suit for mandatory injunction was maintainable even in the absence of a prayer for possession. It therefore becomes necessary for this Court to undertake a factual examination of the context in which the aforesaid observations were made in ***Sant Lal Jain***, in order to ascertain whether the said decision is applicable to the present case.

17.1. In ***Sant Lal***, the appellant, a lessee of the property under the original owner, had granted a one-year licence to the respondent to use a shed for workshop purposes. Upon expiry and revocation of the licence, the respondent failed to vacate, leading the appellant to file a suit for mandatory injunction directing delivery of possession. The trial court dismissed the suit by treating the respondent as a sub-tenant, but the first appellate court reversed this finding, holding that the relationship

was purely that of licensor and licensee, no rent or tenancy having been proved, and that there was no undue delay in bringing the suit. It was further held that, in such factual circumstances, a suit for mandatory injunction is maintainable without filing a separate suit for possession, as the respondent's occupation was admittedly permissive and became unlawful after revocation of licence. In second appeal, the High Court allowed additional evidence showing that the respondent had subsequently purchased the property from the original owner and, on that basis, restored the trial court's dismissal.

17.2. This Court reversed the findings of the High Court and restored the decree in favour of the appellant, holding that the respondent's subsequent purchase of the property from the original owner did not extinguish the appellant's subsisting lease nor legitimise the respondent's possession. A licensee is bound to first surrender possession upon termination and cannot set up title in himself while continuing in possession. There was no merger of rights since the licence had already been revoked prior to the sale. *The Court reiterated that, where possession is permissive and no dispute of title arises, a mandatory injunction itself constitutes an efficacious remedy, and the plaintiff cannot be non-suited merely because the relief effectively results in recovery of possession. Accordingly, the appeal was allowed and the respondent was directed to deliver vacant possession to the appellant.*

18. It is now important to refer to the factual matrix of ***Jospeh Severance and Ors v. Benny Mathew and others*** (supra) as the counsel for the appellants/Plaintiffs has relied on this decision heavily.

18.1. In case of ***Jospeh Severance*** the appellants, owners of the plaint schedule property, had granted a licence to the predecessor of the respondents to construct and run a cinema theatre for a fixed period,

with a clear stipulation that upon expiry the licensee they would demolish the structures and surrender vacant possession. After the death of the original licensee and expiry of the renewed licence period, the appellants issued notice and filed a suit seeking mandatory injunction to vacate and demolish the structures, along with prohibitory injunction. Both the trial court and the first appellate court found that the licence had come to an end, that the defendants had no tenancy or independent right, and that their continued occupation was unauthorised. On these findings, the courts held that a suit for mandatory injunction was maintainable in the given factual scenario and decreed the suit. However, the High Court in second appeal reversed the decree, holding that since the defendants were ex-licensees, the appellants ought to have filed a suit for recovery of possession, and further held that there was delay in filing the suit.

18.2. This Court set aside the High Court's judgment, holding that the approach was contrary to settled law and procedurally unsustainable as no substantial question of law was framed under Section 100 CPC. On merits, the Court reiterated that a licensee does not become a trespasser immediately upon termination of licence, and that where the licensor approaches the court within a reasonable time, a suit for mandatory injunction is maintainable without driving the plaintiff to a separate suit for possession, particularly to avoid multiplicity of proceedings. The question of "reasonable time" is fact-dependent, and in the present case the plaintiffs' explanation was plausible, no specific plea or evidence of unreasonable delay had been raised earlier, and the issue could not be introduced for the first time in second appeal. Relying on *Sant Lal Jain v. Avtar Singh* (supra), this Court held that technical objections as to the form of the suit should not defeat substantive rights, and

accordingly restored the maintainability of the suit for mandatory injunction, allowing the appeal.

- 19.** In view of the aforesaid factual analysis, we are of the considered opinion that the reliance placed by the learned Senior Counsel for the plaintiffs on the decisions in *Sant Lal Jain* and *Joseph Severance* does not advance the case of the plaintiffs and is inapplicable to the facts of the present case. This conclusion is reached for several reasons. **Firstly**, in both the aforesaid decisions, the defendants had entered into possession of the property permissively as licensees. **Secondly**, the relationship between the parties was either admitted or conclusively proved. **Thirdly**, the alleged dispossession was recent, and **Fourthly**, there existed no serious dispute with regard to title or the identity and boundaries of the property. It thus follows that the ratio laid down in *Sant Lal Jain* and *Joseph Severance* applies to cases involving permissive possession. In contradistinction, in the present case, as noticed in paragraph 12 hereinabove, there exists a serious dispute concerning both title and possession, coupled with serious dispute about identity of the land in question viz. suit schedule property. Consequently, the ratio of the aforesaid decisions cannot be extended to the present factual matrix.
- 20.** The legal position governing cases where there exists a cloud over both title and possession of immovable property is well settled. In *Anathula Sudhakar v. P. Buchi Reddy* (supra), as rightly relied upon by learned counsel appearing for the defendants, this Court has authoritatively delineated the circumstances in which a suit for injunction simpliciter would or would not be maintainable. This Court, after an exhaustive survey of the law, held as under:

“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled.

We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. 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 defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14.....

15. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue

of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.”

- 21.** The principles enunciated in *Anathula Sudhakar* govern cases where there exists a dispute as to title and rival claims of possession, whereas the decisions in *Sant Lal Jain* and *Joseph Severance* apply to situations where the defendant is a terminated licensee or permissive occupant, having no independent or competing right in the property. In cases such as *Sant Lal Jain* and *Joseph Severance*, there was no cloud over title or possession, or where the defendant's occupation flows from a licence or permissive arrangement, a suit for mandatory injunction is maintainable as the most efficacious remedy. Viewed thus, there is no inconsistency between the aforesaid judgments, each operating in its own distinct factual and legal sphere.
- 22.** In the present case, as noticed hereinabove, there exists a serious dispute with regard to title, the question that arose was whether the plaintiffs had derived a valid and enforceable title from their predecessors-in-interest. Even assuming, *arguendo*, that the plaintiffs possess a valid title, the High Court has rightly held that where there is a construction raised on the disputed property alleged to be owned by the plaintiffs, the appropriate and efficacious remedy available to them was to institute a suit for possession along with a consequential relief of injunction, and not a suit for injunction *simpliciter*.
- 23.** Thus, upon applying the aforesaid principles, the High Court has rightly held that the plaintiffs' suit was barred under Section 41(h) of the Specific Relief Act, 1963, inasmuch as the plaintiffs failed to seek the relief of possession

despite the existence of a cloud over possession of the disputed property. The suit for injunction simpliciter was, therefore, not maintainable.

- 24.** The High Court has further aptly observed that “*it is strange*” as to how a decree of mandatory injunction came to be granted by the trial court, and subsequently affirmed by the first appellate court, in the absence of any cogent proof regarding the exact location of the portion of land allegedly purchased by the plaintiffs within Khasra No. 436. The High Court rightly noted that there were no measurements whatsoever of the disputed wall, either in the plaint map or in the judgment and decree passed by the trial court. In the absence of such foundational evidence, the grant of a decree for mandatory injunction was wholly unsustainable and could not have been legally issued.
- 25.** No arguments were seriously pressed before us with regard to the applicability of Section 69 of the Partnership Act, 1932. Nevertheless, having regard to the contentions urged on this issue before the courts below, we are of the considered view that the said issue has been rightly decided in favour of the plaintiffs by all the courts.
- 26.** From the foregoing analysis, it is evident that, in the present case, the High Court, while exercising its jurisdiction under Section 100 of the Code of Civil Procedure, 1908, has rightly set aside the judgment and decree of the trial court as well as the confirming judgment of the first appellate court. The High Court found that the concurrent findings recorded by the courts below were vitiated by serious errors of law, arising from a misapplication of settled legal principles and a failure to take into account material aspects having a direct bearing on the rights of the parties. Such errors gave rise to substantial questions of law, thereby justifying interference in second appeal.

- 27.** The High Court correctly concluded that the judgment and decree of the trial court, and their affirmation by the first appellate court, were legally unsustainable, inasmuch as the conclusions reached were perverse, contrary to the governing statutory framework, and incapable of being sustained on a proper appreciation of the law. Upon answering the substantial questions of law framed for consideration, the High Court exercised its corrective jurisdiction to set aside the impugned judgments and passed the consequential order dismissing the suit. We, therefore, find no reason to interfere with the exercise of power by the High Court under Section 100 of the Code of Civil Procedure, the same having been exercised lawfully and judiciously.
- 28.** For the above-mentioned analysis and reasons, we are of the view that the Appeal deserves to be dismissed and same is dismissed. The parties to bear their own costs. Pending applications if any shall stand disposed of.

.....J.
[ARAVIND KUMAR]

.....J.
[NONGMEIKAPAM KOTISWAR SINGH]

NEW DELHI;
JANUARY 15th, 2026.