
(2014) 02 AP CK 0048
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 123 of 1995

M/s. Kumar Brothers and Company	Vs	APPELLANT
A.P. Housing Board and Another		RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Andhra Pradesh Housing Board Act, 1956 — Section 2, 2(6), 52, 52(2), 52(2-A)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 9
Specific Relief Act, 1963 — Section 38, 41(h)

Citation : (2014) 4 ALD 276 : (2014) 3 ALT 420

Hon'ble Judges : M. Satyanarayana Murthy, J

Bench : Single Bench

Advocate : M. Papa Reddy, Advocate for the Appellant; T. Ramulu, Advocate for the Respondent

Final Decision : Dismissed

Judgement

M. Satyanarayana Murthy, J.—The unsuccessful plaintiff, M/s. Kumar Brother & Company, in O.S. No. 137 of 1980 on the file of the Court of II Additional Judge, City Civil Court, Hyderabad (for short, "the trial Court"), preferred this appeal against the impugned decree and judgment of the trial Court dated 08-11-1994, wherein the Court negated the relief of permanent injunction restraining the 1st defendant, their employees, servants, etc. from interfering with the possession and enjoyment of the plaintiff or taking up any construction in 206.18 square yards of land out of old S. Nos. 74 and 75 of Bagh Limgampally Village, now numbered as 3-2-1/1, 3-2-1/1/1 to 3-2-1/1/3, Kacheguda, Hyderabad. The appellant was the plaintiff and the respondents were the defendants and they will hereinafter be referred as arrayed before the trial Court for convenience.

2. The plaintiff purchased an extent of 1309 square yards equivalent to 1100 square meters under an agreement of sale dated 24-10-1978 from the 2nd defendant, Smt. Naga Krishna Maheswari, and took delivery of possession. The property is part of S. Nos. 74 and 75 of Bagh Limgampally Village and

subsequently numbered as 3-2-1/1, 3-2-1/1/1 to 3-2-1/1/3, Kacheguda Station Road, Hyderabad. Subsequently, the 2nd defendant executed a supplemental agreement modifying the original agreement. The plaintiff in total purchased 3,931 square yards from different vendors including the 2nd defendant to construct a cinema theater in the entire extent of land and all those plots are contiguous to each other.

The plaintiff already obtained a registered sale deed for an extent of 1,300 square yards and took possession of the property as part performance of the agreement of sale. The 2nd defendant is the owner of the property by virtue of registered document of the year 1966.

The plaintiff is in possession of entire land measuring 3,931 square yards in his own right. Out of it, 1,309 square yards of land was purchased under agreement of sale from the 2nd defendant. However, the 1st defendant is claiming 206.18 square yards of land out of the same, as if it belongs to the 1st defendant-A.P. Housing Board. The 1st defendant initiated proceedings under Sections 52, 52-A and 53 of Andhra Pradesh Housing Board Act, 1956 (for short, "the Act of 1956"), claiming recovery of possession of 206.18 square yards of land in case No. 59/CA1/79, served notice on 26-04-1979. The plaintiff filed counter/objections to the said notice and thereafter, issued a notice u/s 68 of the Act of 1956 on 22-08-1979.

It is specifically contended by the plaintiff that the land measuring 206.18 square yards out of 1,309 square yards purchased from the 2nd defendant does not belong to the 1st defendant and the 2nd defendant alone is the owner of the said property. By virtue of agreement of sale, the plaintiff is entitled to enjoy the said property. Thus, the plaintiff alone is entitled to claim right over the entire property of an extent of 206.18 square yards shown in the plaintiff plan.

The statutory remedy under the provisions of the Act of 1956 is not adequate and the authorities under the Act of 1956 shall not grant an injunction but the Civil Court alone is competent to grant the relief of injunction claimed by the plaintiff herein. Hence, the Civil Court alone has got inherent jurisdiction. The plaintiff further contended that the plaintiff's predecessor in title and after purchase by the plaintiff, the property is in their possession and enjoyment without let or hindrance, thereby perfected plaintiff's title to the property by way of adverse possession.

The proceedings initiated under Sections 52, 52-A and 53 of the Act of 1956 are untenable and the claim of the 1st defendant is not based on any material and thereby cannot be permitted to take possession of the property under the provisions of the Act of 1956.

Since the plaintiff is in possession of the property, he is entitled to continue in possession of the property, being the purchaser, but the 1st defendant is trying to take forcible possession and in such a case, the plaintiff will be put to much inconvenience and thereby sought for permanent injunction as mentioned in para

No. 1 of the judgment.

3. The 1st defendant filed written statement denying material allegations inter alia contending that the 1st defendant is the owner of 206.18 square yards near Kacheguda Station, Hyderabad, and initiated proceedings under Sections 52, 52-A and 53 of the Act of 1956 against the plaintiff in case No. 59/CA1/79 before the competent authority under the Act of 1956 for eviction of the plaintiff from 206.18 square yards and for recovery of damages for use and occupation from December, 1978, and served a notice on 26-04-1979. The plaintiff filed his verified counter on 24-08-1979 denying right of the 1st defendant to claim 206.18 square yards of site covered by notice without disclosing material particulars.

The plaintiff is only an agreement holder for 1,309 square yards and not the owner of the property. As such, the suit is not maintainable under law and prayed for dismissal on this ground alone.

The suit schedule property is plot No. 10 in Errannagutta Western Quarters Scheme belonging to Ex. C.I.B. succeeded by the A.P. Housing Board. The total extent is 4,223 square yards at Kacheguda junction. The land was reclaimed and was kept open for development purposes. Out of the total area of 4,223 square yards, 3,213 square yards was handed over to Municipal Corporation, Hyderabad, for public purpose. Out of 3,213 square yards, the Municipal Corporation utilized an extent of 1,010 square yards for construction of Jubilee Sarai and kept the remaining the land open. Since the Municipal Corporation of Hyderabad failed to utilize the total extent of 3,213 square yards, the Government, by G.O.Ms. No. 82 Housing dated 02-08-1966, handed over the land measuring 3,213 square yards to the 1st defendant. This includes an area of 2,956 square yards given to Smt. Shanta Bai for construction of maternity home. Since no maternity home was constructed, the land given to Shanta Bai was taken back by the 1st defendant. Thus, under G.O.Ms. No. 82 dated 02-08-1966, the 1st defendant took possession of 3,213 square yards in total for development purpose and in possession of the same. Out of the open land, an extent of 469 square yards was encroached by Sri Laxminarayan Reddy and his son Amruth Reddy. The competent authority under the Act of 1956 passed an order of eviction on 01-01-1975 in case No. 92/CBI/68. Out of the remaining land, the plaintiff encroached an extent of 206.18 square yards and raised construction. Thus, an extent of 206.18 square yards exclusively belongs to the 1st defendant and the plaintiff has no right in it. Neither the plaintiff nor his vendor had no right or title to the schedule property but the 1st defendant, with undue haste, started construction in the encroached portion belonging to the 1st defendant without any manner of right. Therefore, the plaintiff is not entitled to any relief in this suit.

The 1st defendant further contended that remedy provided under Sections 52, 52-A and 53 of the Act of 1956 is adequate to grant any relief and mere denial of title of the 1st defendant by the plaintiff will not oust the jurisdiction of

competent authority and the competent authority can also enquire into title claimed by both the parties and against any order passed by competent authority, an appeal is provided under the Act and the Chief Judge, City Civil Courts, Hyderabad, is empowered to decide such appeals u/s 55 of the Act of 1956. Therefore, without availing statutory remedy, the plaintiff is not entitled to claim any relief in this suit as Civil Court's jurisdiction is ousted and apart from that, when statute provides specific remedy to enquire into title, possession, etc., Civil Court has no inherent jurisdiction and prayed to dismiss the suit.

4. The 2nd defendant remained ex parte.

5. Basing on the above pleadings, the trial Court framed the following issues:

(1) Whether the defendant No. 2 was owner and possessor of 1,309 square yards and it is part of S. Nos. 74 and 75 of Bagh Limgampally?

(2) Whether the agreement of sale is true, valid and binding on the defendants?

(3) Whether the plaintiff has been in possession of the suit land?

(4) Whether the plaintiff encroached on the suit land?

(5) Whether the proceedings initiated by defendant No. 1 before the competent authority are not valid and lawful?

(6) Whether the suit is hit u/s 56 of A.P. Housing Board Act?

(7) Whether the suit in the present form is maintainable?

(8) Whether the suit is properly valued and the Court fee paid is correct?

(9) Whether the suit is time barred?

(10) Whether the plaintiff is entitled to injunction?

(11) To what relief?

6. During the course of trial, on behalf of the plaintiff, P.W.1 was examined and got marked Exs.A1 to A9. On behalf of the defendants, D.W.1 was examined and got marked Exs.B1 to B15.

7. Upon hearing argument of both the counsel and considering oral and documentary evidence on record, the trial Court held that the Civil Court has no jurisdiction while answering issue No. 6 and also decided other issue Nos. 1, 2 and 7 against the plaintiff. Issue Nos. 1, 2 and 7 relate to ownership of the property, genuineness of the agreement and maintainability of the suit.

8. Aggrieved by the impugned decree and judgment, being the unsuccessful plaintiff before the trial Court, the present appeal is filed on various grounds.

The main contention of the appellant-plaintiff is that the trial Court answered issue Nos. 1, 2 and 7 against the plaintiff though the trial Court concluded that the Civil Court has no jurisdiction and it is an error apparent on the face of the

record. The trial Court also rightly appreciated Exs.B9 and B11 but failed to appreciate the judgment in O.S. No. 283 of 1983, whereby the title of the plaintiff was decided.

The statutory remedy under the Act of 1956 is not sufficient and adequate to grant the present relief. Thereby, question of ousting the jurisdiction of Civil Court does not arise. Thus, the trial Court committed an error in dismissing the suit and prayed to allow the appeal setting aside the impugned decree and judgment of the trial Court in O.S. No. 137 of 1980 and pass a decree in his favour granting permanent injunction restraining the 1st defendant, their employees, servants, etc. from interfering with the possession and enjoyment of the plaintiff or taking up any construction in 206.18 square yards of land out of old S. Nos. 74 and 75 of Bagh Limgampally Village, now numbered as 3-2-1/1, 3-2-1/1/1 to 3-2-1/1/3, Kacheguda, Hyderabad.

9. During the course of argument, learned counsel for the appellant mainly contended that the plaintiff is in possession and enjoyment of the property by virtue of agreement of sale obtained from the 2nd defendant. He is entitled to continue in possession and his possession cannot be disturbed unless the title of the 1st defendant is declared by a competent Court. When there is a specific denial of title, the 1st defendant is not entitled to recover possession initiating summary proceedings under the Act of 1956.

It is further contended that the statutory remedy under the Act of 1956 is not sufficient and adequate remedy and the relief claimed in this suit cannot be granted by competent authority exercising its power but the trial Court did not consider various aspects regarding ouster of jurisdiction of Civil Court and committed a grave error in dismissing the suit and finally prayed to allow the appeal setting aside the impugned decree and judgment of the trial Court and pass a decree in favour of the appellant.

On behalf of the 1st defendant, no argument was advanced despite granting sufficient time and opportunity.

10. Considering the contentions of the appellant-plaintiff, oral and documentary evidence including the impugned decree and judgment of the trial Court, the points that arise for consideration are:

(1) Whether Civil Court has got jurisdiction to try the suit despite remedy available under the A.P. Housing Board Act?

(2) Whether the plaintiff is in lawful possession and enjoyment of the property as on the date of filing the suit and whether the defendants infringed or invaded the legal right of the plaintiff, if so, whether the plaintiff is entitled to permanent injunction restraining the defendants from interfering with its possession and enjoyment of the property?

11. In Re. Point No. 1:

The first and foremost contention of the 1st defendant before the trial Court is that Civil Court has no jurisdiction to grant relief in this suit in view of the statutory appeal and bar contained in the Act of 1956 whereas it is pleaded in the plaint that remedy by way of appeal provided under the provisions of the Act of 1956 is not adequate to decide the real dispute in controversy, therefore, invoked the jurisdiction of Civil Court. In view of these specific contentions, I must necessarily advert to the provisions of the Act of 1956 and decide the Civil Court jurisdiction. According to Section 9 of the CPC (for short, "C.P.C."),

The Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

In view of the language used u/s 9 of C.P.C., if there is any express or implied bar on the jurisdiction of Civil Court, the Civil Court cannot take cognizance of the suit in a civil suit. In the absence of any implied or express bar, a Civil Court can try all suits of civil nature. At this stage, I feel that it is relevant to refer the provisions of the Act of 1956, to evict the person who is in unauthorized occupation of the premises belonging to the A.P. Housing Board that means power to evict a person from Board premises under Chapter VI of the Act. Section 52 deals with power to evict certain persons from Board premises subject to compliance of conditions laid down in the Section.

Competent Authority, under the Act of 1956, is defined u/s 2(6) as follows:

Any person authorized by the Government by notification in the Andhra Pradesh Gazette to perform the functions of the competent authority under Chapter VI for such areas as may be specified in the notification.

In the instant case on hand, a notice was published by the plaintiff intimating the public that he is purchasing the schedule property along with other property in Deccan Chronicle dated 29-10-1978 marked as Ex.B1. Basing on the publication, the 1st defendant issued a reply marked as Ex.B2 dated 20-12-1978. Thereupon, the plaintiff addressed a letter to the Chairman, A.P. Housing Board, marked as Ex.B3 and the same is marked as Ex.B3 and the same is replied by the 1st defendant to the counsel for the plaintiff under Ex.B4. Thus, the 1st defendant-Housing Board taken up proceedings under the provisions of the Act of 1956 claiming that the schedule property is the premises belonging to the 1st defendant and requested the plaintiff to vacate the same. Later, filed a petition under Sections 52, 52-A and 53 of the Act of 1956 before competent authority to pass an order for eviction of the respondent in the petition and the plaintiff in the suit from the schedule premises and for collection of damages from December, 1978, and the same is registered as case No. 59/CA1/79 and in the said proceedings, a petition in I.A. No. 39 of 1979 was filed seeking an interim injunction under Order 39 Rules 1 and 2 of C.P.C. Ex.B6 is order passed by the competent authority. Thus, the material on record established that the Housing Board initiated proceedings under the provisions of the Act of 1956 and final order was passed ordering eviction of the plaintiff from the schedule premises

but the plaintiff did not prefer any appeal against the order passed under Sections 52, 52-A and 53 of the Act of 1956 as provided u/s 55 of the Act of 1956. Section 56 of the Act of 1956 prescribed the procedure to be followed by competent authority and it is clear that the appellate authority shall follow the procedure as may be prescribed under C.P.C. as far as they are not inconsistent with the Act or Rules framed thereunder and the appellate authority is vested with all powers of Civil Court when trying a suit and while deciding an appeal u/s 52(2) of the Act of 1956. Thus, a remedy by way of appeal as provided u/s 55 against the order passed under Sections 52 and 53 of the Act of 1956. At the same time, an interdict is created against the jurisdiction of Civil Court u/s 57 and I feel that it is appropriate to extract Section 57 of the Act of 1956 for better appreciation and it is extracted hereunder:

57. Bar of jurisdiction of Civil Courts:-

Save as provided in Section 55, no order made by the competent authority or the appellate authority, in exercise of any power conferred by or under this Chapter shall be called in question in any Court and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Chapter.

As seen from Section 57 of the Act of 1956, there is a clear bar to entertain any suit by any Civil Court against the order passed by the competent authority, the bar is express bar ousting the jurisdiction of the Civil Court. On close analysis of the bar of jurisdiction of Civil Court, the Civil Court has no jurisdiction to pass any order in any suit or proceeding filed questioning the order passed or action taken by the authorities under the Act of 1956 and no injunction shall be granted against the Housing Board, since, any action taken by the authority under the provisions of the Act is only in implementation of the provisions of the Act. Therefore, the order of eviction passed by the competent authority is only in exercise of power conferred on him under Sections 52 and 53 of the Act of 1956. Thereby, in view of the bar u/s 57, Civil Court has no jurisdiction to pass any injunction order restraining the Housing Board from interfering with the possession and enjoyment of the schedule property by the plaintiff which amounts to preventing the authorities in enforcing the order passed by the competent authority to evict the plaintiff from the schedule property.

12. Learned counsel for the plaintiff mainly contended that Courts have to assume jurisdiction in any matter of civil nature unless jurisdiction of the Civil Court is barred by necessary implication or by express provision in any Act. No doubt, the contention of the plaintiff holds substance for the reason that Section 9 of C.P.C. says that the Courts shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In the instance case on hand, there is an express bar u/s 57 of the Act of 1956 to take cognizance of the case on hand. When the plaintiff is in unauthorized occupation of the premises of the Housing Board and eviction order was passed under Sections 52 and 53 of the Act of 1956, the remedy available to

the aggrieved person is only to file an appeal u/s 55 of the Act of 1956 and at the same time, the bar u/s 57 is clear that no Civil Court shall grant injunction against the Housing Board in implementation of the provisions of the Act. Therefore, when sufficient effective and efficacious remedy by way of appeal is provided under the special statute i.e. A.P. Housing Board Act, the jurisdiction of the Civil Court is ousted by express bar u/s 57 of the Act of 1956. Hence, the Civil Court cannot assume jurisdiction.

13. Time and again, the Hon"ble Apex Court reiterated principles as to when jurisdiction can be exercised by the Civil Court. In the judgment of Larger Bench consisting of 7 judges of the Apex Court in *Kamala Mills Ltd. Vs. State of Bombay*, , it was held that

Exclusion of jurisdiction of civil court expressly or impliedly, words of statutory provision on which plea of bar is rested, the scheme of relevant provision, their object and purpose to be seen. Court will consider whether remedy in special statute is sufficient or adequate. Such determination is relevant but not decisive in case of expressed bar. In case of plea of implied bar such determination may be decisive. Special right and liability created by special statute determinable by special tribunal. Even then court will enquire whether remedies normally available in civil court are prescribed by such statute.

In another judgment between *K.S. Venkataraman and Co. Vs. State of Madras*, , the Apex Court held as follows:

If a statute imposes a liability and creates an effective machinery for deciding questions of law or fact by necessary implication, civil court's jurisdiction is barred.

14. When special remedy is provided under the Act, Civil Court cannot entertain any suit and decide cause of the party, who approached the Civil Court instead of approaching the Forum provided under the Act of 1956. In the instant case on hand, a specific remedy is provided u/s 55 of the Act of 1956 to prefer an appeal against the order of the competent authority. As defined under Sub-Section (6) of Section 2, the appellate authority u/s 55 is Chief Judge, City Civil Court, in the instant case on hand which is empowered to exercise the powers of a Civil Court but the plaintiff approached the Civil Court without exhausting the statutory remedy by way of appeal u/s 55 of the Act of 1956. Thereby, the jurisdiction of the Civil Court is ousted due to express bar provided u/s 57 of the Act of 1956. In another judgment between *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, , a Larger Bench of Apex Court laid down the following seven guidelines either to assume jurisdiction of any subject matter of civil nature or to oust the jurisdiction of the Civil Court:

(1) Whether the statute gives finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not

been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decision to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and scheme of particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all the questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act is ultra vires cannot be brought before Tribunals constitutes under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness or the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the order of the authorities is declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined, because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

In *Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf*, , the Apex Court laid down a specific test as follows:

The real test is to see whether a tribunal has power to grant the relief which normally granted by a Civil Court only.

This principle is almost similar to the principle in *Kamala Mills Ltd. Vs. State of Bombay*, . The principle laid down in the above judgments is only that when the authority under the special statute is provided for redressal of grievance by applying the test referred in *Kamala Mills Ltd. Vs. State of Bombay*, whether such authority is competent to grant relief which the Civil Court normally grants. In the instant case on hand, an interim injunction was granted in I.A. No. 39 of

1979 on 25-04-1979 and apart from that, according to Section 56, the competent authority and the appellate authority can exercise powers of Civil Court. Therefore, in view of express bar contained u/s 57, the test referred supra is not a decisive but only relevant. In view of guideline No. 2 in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , when adequate machinery is provided under the special statute, which can exercise power of Civil Court, the Civil Court has no jurisdiction. A co-joint reading of Section 9 of C.P.C. and Sections 52, 53, 55, 56 and 57 of the Act of 1956, it is abundantly clear that a specific machinery which is competent to exercise the power of Civil Court is provided under the statute for redressal of grievance of the plaintiff herein and there is an express bar to entertain any suit questioning the order passed by the authorities.

In Banatwala and Company Vs. L.I.C of India and Another, , the Apex Court held that

Where statute gives finality to orders of special tribunals, civil court's jurisdiction must be held to be excluded if there was adequate remedy to do what civil courts would normally do in suit. Such provision did not exclude those cases where provisions of particular Act was not complied with or statutory tribunal had not acted in conformity with fundamental principles of judicial procedure. Where there was express bar of jurisdiction of Court, examination of scheme of particular Act to find adequacy or sufficiency of remedies provided may be relevant but was not decisive to sustain jurisdiction of Civil Court. Though actions which were covered under 1971 Act were concerning eviction of unauthorized occupants and recovery of arrears of rent. However, 1971 Act did not claim to speak anything about fixation of Standard Rent or maintenance of essential services. Thus, no remedy was provided under 1971 Act. Therefore, jurisdiction of Civil Court for these remedies could not be held to be ousted.

In view of the principle in Banatwala & Company's case (1978 (2) A.W.R. 598 supra), if there is violation of fundamental principles in passing order, the Civil Court can exercise jurisdiction but it is not the case of the plaintiff that the competent authority did not follow the fundamental principles in deciding the matter. In the instant case on hand, the fundamental principles for deciding the dispute were followed by the competent authority. Thereby, the jurisdiction of the Civil Court is ousted.

15. In Re. Point No. 2:

The suit is for the relief of injunction simplicitor, which is governed by Section 38 of Specific Relief Act, and it is purely a discretionary relief. According to the plaintiff, the schedule property, along with other property, was purchased under the original of agreement of sale Ex.A1 dated 24-10-1978. Ex.A2 is Xerox copy of title deed of the vendor of the plaintiff. In fact, these two documents are inadmissible in evidence but for the reasons best known to the trial Court, these two documents were admitted in evidence and marked as exhibits. However, that

is not the real controversy now between the parties. Even according to the judicial admissions in the plaint, the plaintiff is only a purchaser of the property under agreement of sale from the 2nd defendant under the original of Ex.A1 and took delivery of possession of the same and started constructing buildings therein. However, the 1st defendant claimed that the schedule property belongs to the Housing Board, initiated proceedings under Sections 52 and 53 of the Act of 1956 to evict the plaintiff from the suit schedule premises and obtained an order. When the 1st defendant is about to execute the order, the plaintiff approached the Civil Court seeking permanent injunction. Thus, the plaintiff, circumventing the provisions of the Act of 1956, approached the Civil Court claiming discretionary relief of permanent injunction, more particularly to avoid eviction of the plaintiff from the schedule premises.

16. In a suit for injunction simplicitor, the plaintiff must not only establish that he is in lawful possession and enjoyment of the property as on the date of filing of the suit but also prove that his legal right is infringed or invaded by the defendant which gives rise to cause of action for filing the suit for injunction. Mere unlawful possession or unauthorized occupation is not sufficient to claim permanent injunction. In the instant case on hand, the plaintiff is in unauthorized occupation in view of the order passed by the competent authority under the Act of 1956 under Ex.A3. Therefore, a person, who is in unlawful possession, is not entitled to claim permanent injunction without seeking the appropriate relief of declaration of title. In one of the judgments of this Court in Gulam Dastagir Khan (died per L.R.) Shakinwazman Khan Vs. Andhra Pradesh Housing Board, represented by its Chairman having its office at Gruhakalpa, Mukkaramjahi Road, Hyderabad, & Another 1978 (2) A.W.R. 598, this Court in para No. 7 held that.

Under Section 52(2-A), the competent authority is first required to give a notice asking any person who is in occupation to vacate the said premises. If he refuses or fails to comply with such order, the person in occupation shall be deemed to be in unauthorized occupation. In the instant case, admittedly, a notice was serviced on the petitioner asking him to vacate the premises and he refused to do so. Hence, on and from the date of service of notice, he was in unauthorized occupation of the premises.

In Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, the Apex Court in para No. 11 held as follows:

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:

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 simplicitor 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. 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 simplicitor, without claiming the relief of possession. 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.

Their Lordships further in para 12 elucidate elaborately when cloud casts on the title as follows:

We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

In the recent judgment between Yachamaneni Rajaiah Naidu Vs. Yachamaneni Munikrishnaiah and Others, , this Court held as follows:

In a suit for injunction simplicitor, the state of affairs pertaining to possession on the date of filing of suit is material. Title to property assumes significant only after possession.

In view of the principles laid down in the judgments referred above, when possession of the plaintiff is unlawful, the plaintiff is not entitled to claim a bare injunction and has to be non-suited. Hence, the plaintiff in this suit is not entitled

to claim the discretionary relief of permanent injunction totally restraining the defendants from removing the plaintiff in unauthorized occupation of schedule premises. Apart from that, in view of the absolute bar u/s 57 of the Act of 1956, the Civil Court cannot grant permanent injunction against the authorities under the Act of 1956 from implementing the provisions of the Act. On this ground also, the plaintiff is disentitled to claim temporary injunction.

17. The suit is filed both against the Housing Board and his vendor-the 2nd defendant. It is settled law that when equally efficacious remedy that can be obtained in any Civil Court, permanent injunction cannot be granted. There is a specific bar u/s 41(h) of Specific Relief Act that Court shall not grant permanent injunction when equal efficacious relief that can be obtained by the plaintiff in a Civil Court. In the instant case on hand, the plaintiff claimed injunction simplicitor basing on the agreement of sale and possession. Even as on today, the plaintiff is not the lawful owner and he is only an agreement holder. The efficacious remedy that can be obtained by the plaintiff against the 2nd defendant is only specific performance. Therefore, the suit for bare injunction is not maintainable against the 2nd defendant, of course no relief is claimed against the 2nd defendant.

18. The trial Court, on appreciation of facts with reference to provisions of the Act of 1956, rightly concluded that the plaintiff is not entitled to claim the discretionary relief of permanent injunction and declined to grant relief u/s 38 of Specific Relief Act.

19. On overall consideration of entire material on record, it is clear that the Civil Court has no jurisdiction to grant any permanent injunction against the action taken by the Housing Board or in implementation of the provisions of the Act of 1946 that too permanent injunction sought by the plaintiff is indirectly disabling the 1st defendant from executing the order passed by the competent authority. Hence, the plaintiff is not entitled to claim permanent injunction. Accordingly, the point is held in favour of the 1st defendant and against the plaintiff as I find that the appeal is devoid of merits.

20. In the result, the appeal is dismissed confirming the impugned decree and judgment dated 08-11-1994 passed in O.S. No. 137 of 1980 on the file of the Court of II Additional Judge, City Civil Court, Hyderabad. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.