

Court of Addl. Civil Judge (SD), Court No.3, Bijnor**OS No. - 153/2020****Chandrapal Singh v. Kallu Singh****11-08-2023**

Record Presented. Case called out.

Ld. Counsel of Plaintiffs and Defendant already heard on Application no. 6C₂.

Case is fixed for Order on Application 6C₂.

Disposal of Application no. 6C₂

1) The Application 6C₂ by the Plaintiff supported with affidavit states that ancestor of plaintiff Mangal Singh died and land was possessed by 3 sons i.e. Buddh Singh, Chhotey and Jhabre. Plaintiff got possession of land possessed by Buddh Singh and Jhabre by way of instruments and brothers of plaintiff give their share to plaintiff. Wife of Jhabre through Will bequeath the land possessed by them to wife of plaintiff, consequently plaintiff got possession of the same. Defendant has executed a document dated 08-02-2023 and creating obstruction in construction work of plaintiff. Defendant has no right to interfere in land of plaintiff. If temporary injunction is not granted then the defendant during the pendency of the suit will obstruct construction, which will cause irreparable injury to the plaintiff. Therefore it is prayed by plaintiff to Injunct the defendants not to construction on land by themselves and legal representative during the pendency of the suit.

2) The Defendant in objections 25C₂ supported with affidavit against the application of the plaintiff for grant of temporary injunction under Order

39 Rule 1,2 CPC stated that application is based on false and baseless allegations. Therefore, plaintiff have failed to establish prime facie case and balance of convenience is also not in favour of plaintiff. Plaintiff's application be dismissed.

Heard & rulings filed by defendant i.e. 1979 ALL. L.J. 54 and 1983 (1) LCD 15 Perused.

3) *The Hon'ble Allahabad High Court in Anand Prasad Agarwal v. Tarkeshwar Prasad [2002 (93) R.D. 675] held that for the grant of the temporary injunction following conditions need to be satisfied viz. -*

- (1) Prime Facie Case in favour of plaintiff.***
- (2) Irreparable Injury likely to be caused to plaintiff.***
- (3) Balance of Convenience lies in favour of plaintiff.***

4) *Hon'ble Supreme Court in Makers Development Services Private Limited vs. M. Visvesvaraya Industrial Research and Development Center, [(2012)1 SCC 735] and Hon'ble Allahabad High Court in Moradabad Development Authority vs. Sai Sidhi Developers [AIR 2019 All 196] held that following conditions must be fulfilled before grant of ad interim injunction under Order 39, rules 1& 2 CPC :*

- (1) Prima facie case***
- (2) Balance of convenience***
- (3) Irreparable loss***
- (4) Bona fide conduct of the party seeking injunction***

Prima Facie Case

5) It is well settled principle of law that party to the litigation who seeks an injunction must satisfy the court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie case is in his favour.

6) It is very much clear from perusal of record that the plaintiff has prayed for injunction against the defendants that they should be stopped from changing nature of land by construction.

7) ***Hon'ble Allahabad High Court in Amir Alam Khan vs. Lucknow Development Authority, Lucknow, {2011 (29) LCD 1695 (All) (DB)(LB)}*** held that Court should not proceed for mini- trial of the suit while granting or refusing an application under Order 39, Rules 1 & 2 CPC.

8) Plaintiff has asserted that disputed land owned by Mangal Singh was inherited by his 3 Sons i.e. Buddh Singh, Jhabre and Chhotey, but nothing has been brought on record by the plaintiff that Partition by metes and bounds of disputed land took place among them or not. Paper no. 10C Will of Smt. Laxmi w/o Jhabre shows that her share was bequeathed on plaintiff and paper no. 12C Sale Deed 26.09.2017 shows that Raghunath s/o Budhh Singh sold his share to wife of plaintiff, as no partition took place among Buddh Singh, Jhabre and Chhotey, then how can Smt. Laxmi w/o Jhabre bequeath her definite share and Raghunath s/o Buddh Singh sold his definite share to plaintiffs. Even defendant has claimed that disputed land was bought by his wife from the heirs of Mangal Singh.

9) In present case, de jure possession has to be established on the basis of title to the property as both plaintiff and defendant are claiming title to the

disputed land and with respect to that ruling of **Hon'ble Supreme Court in T.V. Ramakrishna Vs M. Mallappa, {AIR 2021 SC 4293}** is relevant and Hon'ble Supreme Court held that as a suit for injunction simpliciter is concerned only with possession normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession. And **Hon'ble Supreme Court in Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs & Ors { 2008 (4) SCC 594 }** held that 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.

10) Thus, In the light of ruling of Hon'ble Supreme Court, Hon'ble Allahabad High Court and above analysis plaintiff has failed to prove his prime facie case.

Balance of Convenience and Irreparable loss

11) Plaintiff fails to prove prima facie case as there is no clarity regarding possession of the plaintiffs on the disputed land, this implies that there is no irreparable injury to the plaintiffs neither balance of convenience is in favour of Plaintiffs.

Hence, Application 6C₂ for temporary injunction is liable to be rejected and objections 25C₂ are disposed accordingly.

ORDER

Application 6C₂ is thereby rejected. Put up for issues on 06.09.2023.

**(Anshuman Dhunna)
Addl. Civil Judge (S.D.),
Court No. 3, Bijnor**