

R.C.S. No. 233/2015
Jamil Vs Sultan

ORDER BELOW EXH. 56

(Dated 20/04/2017)

This is an application filed by defendants under Order 39 Rule 1 and 2 R/w Section 151 of Code of Civil Procedure, 1908.

2. It is contended by defendants in the instant application that they are legal heirs of one Abdual Razzak. He was the absolute owner of the suit property. The father of plaintiffs was the son in law of one Abdul Karim Sk. Chhotu , who was the real brother of Munnabai. Munnabai was the previous owner of the suit property. The father of plaintiffs was a poor person not having any accommodation for his residence. The previous owner of the suit property Munnabai, allowed him to reside in the suit property. Munnabai sold the suit property to one Champatlal Badrilal, however, he allowed the father of plaintiff and Munnabai to reside in the suit property. Thereafter, the suit property was purchased by father of defendants from Champatlal by registered sale deed dated 08.08.1957. Since then the father of defendants become absolute owner of the suit property. Defendants are regularly paying municipal taxes of the suit property. The suit property in which plaintiffs are residing had fallen down due to heavy rain in August 2015. Thereafter, plaintiffs illegally demolished the entire structure by taking disadvantage of the same. On 28.08.2015, plaintiffs without permission of defendants and competent authority started construction of the suit property. Defendants orally requested them not

to construct over the suit but they threatened to kill defendants. Thereafter, again on 8.04.2017, plaintiffs started illegal construction of the suit property. Defendants reported the said fact to the police authority but they have not taken any action against plaintiffs. Defendants also filed complaint to Municipal Council, Kamptee but it had not taken cognizance. Therefore, defendants have filed instant application thereby praying to restrain plaintiffs from carrying out construction over the suit property.

3. Vide reply Exh.57, plaintiffs have strongly opposed the application. It is contended by them that the present application has been filed with an ulterior motive to prolong the matter at hand. Defendants are not the exclusive owner of the suit property. Defendants by way of instant application trying to mislead the court and have concealed material facts from this court. The present application being frivolous, they contended that it be rejected.

4. Heard learned counsel for defendants Shri. S.M. Kushwaha and learned counsel for plaintiffs Shri. S.R.Kale. Considering the rival contentions and submissions of the parties following points arise for my determination, to which I have recorded my findings for the reasons to follow-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether defendants have prima facie case in their favour?	<u>No.</u>
2.	Whether defendants have balance of convenience in their favour?	<u>No.</u>

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
3.	Whether defendants would cause irreparable loss if the injunction as sought refused?	<u>No.</u>
4.	What order ?	Application rejected.

5. In order to substantiate their contentions defendants have filed some documents below Exh. 54. However, plaintiffs have not relied on any document.

R E A S O N S

AS TO POINT NOS. 1 to 4 :-

6. As all these points under my determination are co-related, in order to avoid repetition of facts I have taken them together for my discussion. At the outset it is necessary to mention here that defendants have claimed equitable relief by way of temporary injunction to restrain plaintiffs from carrying construction over the suit property. Needless to say that injunction is an equitable relief. In order to seek equitable relief, defendants/applicants have to show that they have prima facie case, balance of convenience in their favour and if the equitable relief of injunction is not granted it would cause irreparable loss to them. It is to be noted here that prima facie case means the debatable or arguable case. In the light of above mandate of law I have to see whether defendants have satisfied the above requirements.

7. Perused application, say and record. The present suit is for declaration, partition, separate possession and injunction. By way of

the instant application it is contended by defendants that plaintiffs are carrying out illegal construction over the suit property. In support of their contentions, defendants have filed copy of complaint filed with Municipal Council, Kamptee. From its bare perusal, it can be seen that defendants themselves have contended therein that plaintiffs are trying to construct the roof of the house bearing house No.M/216-L-8 without permission. It is pertinent to note here that the present suit is in respect of house no. M/200 and M/202. The contents of the complaint relied by defendants itself shows that the construction is going on of house No. M/216-L-8. It is necessary to mention here that, the house on which the alleged construction is going on is not the subject matter of the present suit.

08. Moreover, in order to substantiate their contentions, defendants also filed some photographs on record showing the construction. Though it can be seen from the photographs that the construction is going on at some place, but it can not be said that it is going on the suit property. Therefore, theses photographs are not helpful to defendants to show that the plaintiffs are carrying on construction on the suit property at this stage.

09. It is pertinent to note here that there is nothing on the record to show that plaintiffs are carrying out construction over the suit property. Moreover, the copy of complaint relied by defendants itself shows that construction is going on house No. M/216-L-8, which is not the subject matter of the present suit. Therefore, it is seen that defendants have not come before the court with clean hands. It is trite

law that he who seeks equitable relief must come before the court with clean hands. As stated supra, defendants have not come before the court with clean hands, therefore, in my view they are not entitled to equitable relief of injunction.

10. Moreover, it is contended by defendants that construction is going on without permission of the competent authority. For the sake of discussion if it is assumed that plaintiffs are carrying out the construction on the suit property without permission of competent authority, in such a situation also defendants have an efficacious remedy before that competent authority for alleged acts of plaintiffs. It is trite law that if efficacious remedy is available, equitable relief of injunction should not be granted. Thus, in my view for the reasons stated supra, defendants have failed to show arguable case/prima facie case. Thus, as the defendants failed to show the prima facie case, the other ingredients like balance of convenience and irreparable loss loses their importance. Thus, considering the reasons stated supra, I answer point Nos. 1 to 3 as “No” and in answer to point No.4, proceed to pass following order.

ORDER

1. Application is rejected.
2. Costs in cause.

Kamptee.
Date : 20/04/2017

(R. P. Bathe)
2nd Jt. Civil Judge, Jr. Dn,
Kamptee.