

MHSN050009992007



Common order below Exhs.207 & 216 in
Regular Civil Suit No. 264/2007

1. Perused the applications at Exhs.207 and 216 and the say filed to it. The application at Exh.207 has been filed by the plaintiff under Order 39, Rule 1 & 2 of the Code of Civil Procedure for *ad interim* injunction. He submitted that as per order passed below Exh.6, the defendant Nos.5,7,10 & 11 have been directed to maintain *status quo* in respect of the suit property. Though there is a *status quo* order, the defendant Nos.5,7,10 & 11 by making construction in the suit property have changed its nature which is contempt of Court therefore their defence may be strike out and they may be directed to maintain *status quo*.

2. The defendant No.5, 7, 10 & 11 have filed their say at Exh.213, other defendants failed to file their say. They denied contents of the said application. They have challenged the order passed at Exh.6 on various grounds. It is submitted that false suit has been filed by the plaintiff. They denied evidence produced by the plaintiff. It is submitted that the plaintiff only to prolong the matter from last 14 years, has filed such application therefore, the application be rejected.

3. The defendants filed application at Exh.216 as per Order 39, Rule 4 R/w section 151 of the Code of Civil Procedure. It is submitted that by showing emergency the plaintiff has obtained *status quo* order on dated 30/6/2007 from the Court. There was no cause of action to file this suit. The plaintiff has filed false suit. They in detail has denied the evidence produced by the plaintiff. It is submitted that the *status quo*

order passed at Exh.6 be canceled. The suit may be proceeded expeditiously.

4. The plaintiff opposed the application and denied all contents of it. It is submitted that the defendant Nos.5,7,10 & 11 have made construction of the suit property against the Court order. By filing such application the order passed at Exh.6 cannot be revoked and reviewed. Therefore, the application is not maintainable. Therefore, it may be rejected.

5. The application at Exh.207 is in respect of directing the defendants to maintain *status quo* and the application at Exh.216 is in respect of cancellation of the order passed at Exh.6 (*status quo order*) hence both the applications are interconnected therefore they are taken together for order.

6. Heard the learned counsel for both sides. It is submitted that the defendant Nos.5, 7, 10 and 11 are not honouring the order passed at Exh.6. They are changing the nature of the suit property therefore they be directed to maintain *status quo* and for breach of the said order their defence may be strike out. The Court has passed order at Exh.6 considering the case of plaintiff at prima facie level, the defendants have not challenged the order passed at Exh.6 before the Appellate Court from last 13 to 14 years. Now, they cannot challenge it before this Court itself. The defendants are prolonging the suit proceeding by filing different applications. The plaintiff completed his evidence in the year 2021. The defendants are not adducing evidence since last 3 years and filed this application to prolong the suit. Hence, the application of the defendants be rejected.

7. The learned counsel for the defendants submitted that the plaintiff has filed this false suit. There is no any merit in this suit. It is submitted that the Court has not considered the registered Will deed, mental condition of his father at the time of execution of Will deed. It is submitted that as per the Will deed, the defendants are owners of the suit property. The plaintiff by showing urgency obtained *status quo* order from the Court. The plaintiff is misusing the said order against the defendants. Due to the said order he cannot change the nature of the house. It is very difficult to him to live in his old house. The plaintiff by filing different applications is prolonging the suit since last 13 years therefore as per the Order 39, Rule 4 of the Code of Civil Procedure the *status quo* order may be canceled and the application of the plaintiff be rejected. The learned counsel for defendants relied on 54 case laws filed as per list at Exh.228

8. Considering the submission of both sides gone through the case record. Perused the order passed at Exh.6. It appears that the order at Exh.6 has been passed after hearing both sides on dated 2/4/2008. By the said order the defendant Nos.5, 7, 10 & 11 have been ordered to maintain *status quo* in respect of the suit property till decision of this suit. The defendants have challenged the *status quo* order as per Rule 4 of Order 39 of the Code of Civil Procedure. Therefore, for ready reference the said Rule is reproduced here.

Order 39, 4. Order for injunction may be discharged, varied or set aside.—Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

[Provided that if in an application for temporary injunction or in any affidavit supporting such application, **a party has knowingly made a false or misleading statement in relation to a material particular** and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed **after giving to a party an opportunity of being heard**, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been **necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.**]

9. As per the above rule, order passed under Rule 1 & 2 of Order 39 of the Code of Civil Procedure can be vary, or set aside as per first proviso of Rule 4 if the ex parte order has been passed without giving notice to the other side and the plaintiff knowingly made false or misleading statement in relation to the material particular. The second proviso of the Rule 4 provides that the Court can vary, or set aside the said order of injunction if it is granted after giving opportunity to hear the other side, if it is necessitated due to change in circumstances or if it is causing undue hardship to the party against which it has been granted.

10. On perusal of the order passed at Exh.6, it appears that it has been passed after giving opportunity of hearing to the defendants. So it is not ex parte order. The contention of the defendants is that the plaintiff knowingly made a false and misleading statement and obtained the *status quo* order from the Court. It is to be noted that the defendants have been heard at the time of passing order at Exh.6 and the defendants have got ample opportunity to state their case at that time. The order passed at Exh.6 is not an ex parte order, therefore, in view of first proviso of Rule 4 the contention of the plaintiff is not accepted that the plaintiff has obtained the order at Exh.6 by misleading the Court.

11. It is to be noted that the order at Exh.6 has been passed in the year 2008. The plaintiff has completed his evidence side and when the matter is fixed for defendants' evidence then this application has been filed on record i.e. after 14-15 years. It is also to be noted that the defendants have filed an application at Exh.51 in the year 2010 to change the roof of the suit property. The said application has been

allowed by the Court and the defendants were permitted to change the iron sheet roof of the suit property. Further it appears that the defendants also have filed application at Exh.131 to alter the flooring of the suit property and the said has been allowed by this Court. It further appears that the plaintiff has not challenged this order before the appellate Court. So the order at Exh.6 is unchallenged order and due to the said order the defendants also have filed application at Exhs.51 and 131 and got permission of this Court to change the nature of the suit property. Therefore, the plaintiff's contention is not at all acceptable at this stage that the *status quo* order has been obtained by the plaintiff by making false statement and by misleading the Court.

12. It appears that the plaintiff by this application has challenged the merit of the order passed at Exh.6 i.e. on the basis of the evidence produced by the plaintiff in a trial of this suit. It is to be noted that the said order has been passed considering the case of the plaintiff at prima facie level therefore the plaintiff on the basis of evidence adduced by the plaintiff in a trial of this suit cannot challenge its merit before this Court itself. The evidence adduced by the plaintiff only can be considered at the time of final hearing and it cannot be used to challenge the order passed at Exh.6.

13. As per proviso (2) of Rule 4 of Order 39 of the Code of Civil Procedure, the injunction order passed by the Court may be set aside if the party shows that there is change in circumstances or it is causing undue hardship to him. The defendants nowhere stated what is change in circumstances after passing the said order. The defendants' contention is that from last 14 years they cannot change the nature of the suit property and therefore they are causing undue hardship. It is to be noted that the defendants by filing application at Exh.51 have changed the iron sheet roof of the suit property with permission of this Court. Further, it

appears that in the year 2019 defendants also changed flooring of the suit property with permission by this Court. So whenever there was a hardship to the defendants, they have filed application before this Court and this Court also have granted it. Therefore, defendants' contention is not acceptable that they are causing hardship due to the said order. It appears that the plaintiff already completed his evidence and the suit is pending for evidence of the defendants. It is to be noted that the defendants are not adducing their evidence on record from last three years and filed such application. If they have adduced their evidence the the suit might have been decided on merit prior to filing such an application. But it appears that the defendants are not adducing their evidence though the plaintiff has completed his evidence prior to three years. Hence, the defendant's contention is not acceptable that the plaintiff prolonging this suit and therefore, they are causing undue hardship.

14. I have gone through the case laws cited by the defendants. In all 54 case laws filed by defendant No.7 as per list at Exh.228. It is to be noted that the defendant No.7 has filed case laws on various legal points i.e. what is joint family property, what is legal presumption in respect of registered document, how the Will deed has to be executed and how it has to be proved, what is a self-acquired property, what is abuse of process of law, what is a legal injury, what is pleading and granting of relief as per pleading, non-joinder of necessary parties, what is legal value of mutation entry and revenue record, Court duty while granting discretionary relief etc., and case law in respect of Order 39, Rule 4 of the Code of Civil Procedure. It appears that by filing such case laws the defendant No.7 has challenged the merit of plaintiff's case like it has to be decided finally by judgment. As held above the merits of the plaintiff's case cannot be considered at this stage and it only can be considered at the time of final hearing. Therefore, most of the case laws

are not relevant at this stage. Therefore, I have only considered the relevant case laws.

(i) In **Bepin Krishna Sur & Ors vs. Gautam Kumar Sur & Ors, 1980 DgLaw(Cal) 295** the Hon'ble Calcutta High court held that as per Order 39, Rule 4 of the C.P.C., the injunction order can be varied or set aside on account of change in circumstances and when there is undue advantage to a party against which passed it. It is held that hardship means harsh or oppressive treatment or injustice.

(ii) In **Rameshwar Dass vs. Brij Bhushan & Ors, AIR 1988 Himachal Pradesh 31**, the Hon'ble Himchal Pradesh High Court held that at the time of passing order under Order 39, Rule 4 of the C.P.C., the other side has to be heard.

(iii) In **The Bengal Club Ltd. Vs Susanta Kumar Chowdhary**, the Hon'ble Calcutta High Court held that defendant can show before the Appellate Court challenging the ex parte ad interim injunction order that plaintiff has suppressed the fact before the trial Court. It also held that pleading is important while deciding *ex parte* injunction order. At para 51 it has stated the principles which has to be considered while passing ex parte injunction order laid down by the Hon'ble Supreme Court in Morgan Stanley case.

(iv) In **Hosali Press (P) Ltd. Vs K.N. Guruswamy, AIR 1982 Karnataka 153** it is held by the Hon'ble Karnataka High Court that if the trial court is not using its discretion judiciously while granting temporary injunction then it is duty of the Appellate Court to correct order of the trial Court.

15. In view of above case law at Sr. No.(i) the order passed

under Order 39, Rule 1 & 2 of the Code of Civil Procedure, only can be canceled if there is a change in circumstances and the said order is causing undue hardship to the other party. In the case in hand as held above the defendants failed to show that they have caused hardship and there is a change in circumstances. Therefore, this case law is not applicable to the present case. As per case law at Sr. No.(ii) the other side has to be heard while deciding application under Rule 4, Order 39 of the Code of Civil Procedure. In the case in hand, both the parties have been heard. The case laws at Sr. No. (iii) & (iv) is in respect of passing *ex parte* injunction order and in respect of judicial discretion of the Court while passing the injunction order. The defendants on the basis of this case laws have challenged the order passed by this Court at Exh.6. As held above, the order passed at Exh.6 cannot be challenged before this Court on its merit. Therefore, this case laws are not applicable to the present applications.

16. In sum and substance, in view of Rule 4 of Order 39 of the Code of Civil Procedure and in view of previous order of this Court passed at Exhs.51 & 131, the defendant No.7 failed to show that the order passed at Exh.6 is obtained by plaintiff by misleading the Court and also it is necessary to revoke due to change in circumstances or due to hardship caused to defendants. Hence, the application of the defendants is liable to be rejected.

17. The plaintiff has filed application at Exh.207 for maintaining the *status quo* and for striking out defence of defendants as they are not following the order passed at Exh.6. Nothing has been filed on record by the plaintiff to show which change has been made by the defendants in the suit property without permission of the Court. It is to be noted that the defendants by filing application at Exh.51 have got permission of this Court to change the roof of the suit property. It further appears that the

defendants by filing application at Exh.131 got permission of this Court to change flooring of the suit property. So the defendants have made change in the suit property as per permission of this Court. No any evidence has been placed on record to show that the defendants have breached the said order. Considering previous application filed by the defendants to change the nature of the suit property, it appears that the defendants are well aware of the order passed at Exh.6 and therefore, they obtained permission of this Court to change nature of the suit property. Therefore, the contention of the plaintiff is at not acceptable that the defendants have changed the nature of the suit property. Therefore, there is no any reason to strike out the defence of the defendants.

18. It appears that though there is order of *status quo* passed at Exh.6 on 2/4/2008 again the plaintiff has made same prayer in this application which is not maintainable when there is earlier order. Therefore, the plaintiff's application is liable to be rejected. In view of above discussion, I come to the conclusion that both the applications are liable to be rejected. The suit is old more than 15 years. Hence, order.

ORDER

1. The application at Exh.207 (filed by the plaintiff) and the application at Exh.216 (filed by the defendants) are hereby rejected.
 2. As the suit is old more than 15 years both parties are directed to proceed expeditiously with the suit proceeding.
- Both parties to take note of this order.

Islampur

Date : 22/3/2024

(V. G. Chaukhande)

Civil Judge, Sr. Dn., Islampur

CERTIFICATE

I affirm that, the contents of this P.D.F. file order/Judgment are same, word to word, as per the original order.

Name of Stenographer	:	S. A. Desai
Court	:	Civil Court Sr.Dn.Islampur
Date of Order/Judgment:		22/03/2024
Signed on	:	28/03/2024
Uploaded on	:	30/03/2024