

COURT OF PRINCIPAL DISTRICT JUDGE, BUDGAM

Filing No. 1683/2022

CNR No. JKBG.020011982022

Date of Instt. 17.10.2022

Date of order: 19.10.2022

Name of the Appellant/Applicant:

Mohammad Abdullah Bhat

S/o Mahda Bhat

R/o Alamdar Colony Bugam Batapora

Tehsil Chadoora District Budgam.

Through: Mr. N. A Kuchai, advocate

Versus

Name of the Respondents/Non-Applicants:

1. Nazir Ahmad Bhat

2. Ghulam Mohammad Bhat

Sons of Abdul Qadir Bhat

3. Yasir Arfat

4. Bilal Ahmad Bhat

Sons of Ghulam Mohamad Bhat

5. Mohammad Younis Bhat

Son of Nazir Ahmad Bhat

All residents of Alamdar colony

Bugam Batapora Tehsil Chadoora Budgam

Through: Mr. S.A Manan, advocate

CORAM: Mohammad Ashraf Malik

UID No. JK00045

ORDER

1683/2022 (Appeal) & (Application for interim relief):

1. Impugned in this appeal is the order of Ld. Sub-Judge, (CJM) Budgam dated 13.10.2022 (in short "Impugned Order") passed in IA No. 281/N whereby the Ld. Trial Judge has rejected the IA No. 281/N for grant of interim injunction laid by Appellant and vacated the ad-interim direction. Equally, the Ld. Trial Judge has directed

the respondents that they shall furnish an undertaking to the extent that in the event, the Appellant succeeds in his suit the respondents shall reimburse the Appellant such damages as may be caused to him.

2. With the concurrence of learned counsel on both sides, Appeal is admitted to hearing. Accordingly Appeal at hand is taken up for hearing and determination under law.
3. Heard and considered the matter.
4. Mr. N. A Kuchai, advocate appearing for Appellant strenuously canvassed that respondents proposed building activity is seriously prejudicial to the interests of the appellant. He added that with the raising of the question construction, respondents would also raise the level of soil over and above the level of the land and residential house of the appellant. He strongly urged that by raising the level of soil supra serious damage and waste would be caused to the contiguous land and residential house of the appellant. Mr. Kuchay projected that impugned order in such state of affairs would cause serious miscarriage of justice and irreparable loss to the appellant. He maintained that learned trial judge has overlooked all these aspects and recorded impugned order discreetly.
5. Mr. S.A Manan, advocate appearing for respondents fervently resisting the plea of learned counsel for the appellant contented that the respondents are carrying building activity to raise their resident house over their proprietary land. He added that no damage or waste would be caused of such activity to the appellant's lad/house. He also added that though the litigation at hand is purely frivolous but respondents in order to maintain harmony with the appellant who is their next door neighbor and relative would undertake that level of the soil while carrying building activity supra would not be raised over and above the

contingence land of the appellant. Mr. Manan made it clear that such statement is made without prejudice to the respondents right to get the appeal/suit otherwise determined on merit.

6. Mr. N .A Kuchay, advocate appearing for the appellant in response stated at bar that if respondents furnish undertaking as stated by the learned for the respondents, impugned order may be modified and Appeal disposed accordingly.
7. Mr. S.A Manan, advocate appearing for respondents in furtherance of the statements made at bar supra submitted requisite undertaking. Be made part of file.
8. Learned counsel on both sides seek disposal of Appeal in the aforenoted terms.
9. Therefore in the back drop of preceding discussions and the statements made at bar, undertaking is taken on record and impugned order is modified to the extent that respondent No. 1 to 3 shall besides the undertaking required to be furnished by the impugned order also adhere to the undertaking furnished before this court while carrying on building activity over their land adjoining the land of the appellant. Impugned order shall stand modified to the aforesaid extent.
10. Appeal disposed accordingly. Copy of this order alongwith undertaking and trial court record, if any, shall be send to learned Trial Magistrate for information.

Announced
19-10-2022

MOHAMMAD
ASHRAF MALIK
Pr District Judge
Budgam

Digitally signed by
MOHAMMAD ASHRAF MALIK
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