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**(2005) 08 AHC CK 0166**

**Allahabad High Court**

**Case No:** F.A.F.O. No.1378 of 2005

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| U.P. Power Corporation Ltd. and Others | | APPELLANT |
| | Vs | |
| Zakir Hasan and Others | | RESPONDENT |

**Date of Decision:** Aug. 16, 2005

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2

**Citation:** (2006) 1 AWC 707

**Hon'ble Judges:** Yatindra Singh, J; R.K. Rastogi, J

**Bench:** Division Bench

**Advocate:** Ranjit Saxena, for the Appellant; Mohd. Arif, for the Respondent

**Final Decision:** Partly Allowed

**Judgement**

R. K. Rastogi, J.
This is an appeal against order dated 2.5.2005, passed by the Civil Judge (Senior Division), Saharanpur in Original Suit No. 161 of 2005, Zakir Hasan and Ors. v. U. P. Power Corporation Ltd. and Ors.

2. The facts relevant for disposal of this appeal are that the Plaintiff Respondents filed the aforesaid suit against the Defendant Appellants with these allegations that the properties described in Schedule A and B of the plaint shown by letters A E F B in the plaint map were originally owned by Chaudhary Shyam Singh son of Choudhary Asha Ram. Shyam Singh sold these properties to Sardar Jagjeet Singh son of Sardar Anoop Singh vide registered sale deed dated 5.12.1967. Sardar Jagjeet Singh sold the property described in Schedule A to Plaintiff No. 1 vide registered sale deed dated 10.10.2002 executed by his general attorney Abbas Husain and put Plaintiff No. 1 in possession of the above property. Plaintiff No. 1 constructed boundary wall towards west of this land which is shown by red line in the plaint map. Sardar Jagjeet Singh also sold the property described in Schedule B to Plaintiffs No. 2 and 3 vide registered sale deed dated

13.6.2002 through his general attorney Abbas Husain. Plaintiffs No. 2 and 3 are in possession of this property. The Defendants have got no concern with this property. There is eight feet wide passage towards west of these properties described in Schedule A and B and thereafter there are quarters of Hydle Department. Plaintiff No. 1 had also purchased the property shown by letters D E F C in the plaint map vide registered sale deed dated 10.10.2002, executed by Sardar Jagjeet Singh through his general attorney Sri Abbas Husain and Plaintiffs No. 2 and 3 had also purchased the property shown by letters A B C D in the plaint map from Sardar Jagjeet Singh through his general attorney Sri Abbas Husain vide registered sale deed dated 13.6.2002. In December, 2002, the Plaintiffs wanted to construct a boundary wall from A to E towards south of the properties shown by letters DEFCYABCD. At that time the Defendants'' employees obstructed them from doing so. Then the Plaintiffs filed Original Suit No. 76 of 2003, Munavvar Khan and Ors. v. U. P. State Power Corporation, in the court of the Civil Judge (Senior Division) Saharanpur and also prayed for interim injunction, and after hearing both the parties the I Ind Additional Civil Judge (Senior Division) passed an order on 8.2.2005, restraining the Defendants from causing any interference in construction of the boundary wall as well as other constructions on the disputed land. Aggrieved with the above order the Defendants filed Misc. Civil Appeal No. 12 of 2005 in the court of the District Judge, and in that appeal, the District Judge passed an order directing both the parties to maintain status quo. There was no dispute in that suit in respect of the properties described in Schedule A and B of the plaint but the Defendants started to threat that they would not permit the Plaintiffs to raise constructions on the property specified in both the schedules and will also demolish their boundary wall and will occupy the land. They also started to demolish the boundary wall. Then the Plaintiffs filed this suit for permanent injunction to restrain the Defendants from causing any interference in digging the foundation and construction of the boundary wall and other constructions in the disputed land specified in Schedule A and B. The Plaintiffs also prayed for interim injunction vide their application under Order XXXIX, Rules 1 and 2, CPC They filed the affidavit of Zakir Hasan in support of this application. Photostat copies of the sale deeds executed by Sri Abbas Husain as general attorney of Sardar Jagjeet Singh in favour of the Plaintiffs as well as photostat copies of Khewat and Khasra and photostat copy or the record of Original Suit No. 76 of 2003 were annexed with the aforesaid affidavit.

3. The Defendant Appellants filed a joint written statement in the above suit. They pleaded therein that Shyam Singh was never the owner of the disputed land. He could not execute any sale deed of this property in favour of Sardar Jagjeet Singh nor Jagjeet Singh acquired any title in the property on the basis of the sale deed executed by Shyam Singh and so the Plaintiffs could not acquire any title or interest in the disputed property vide the sale deed executed by Sardar Jagjeet Singh through his attorney Abbas Husain. The Plaintiffs and their predecessors never obtained possession of the disputed land. The sale deeds relied upon by the Plaintiffs are fictitious. Electrical goods, transformers and electric poles are lying on the disputed land. A railway line had been fixed on the disputed land about 60 years ago and it works like boundary wall on the land. The names of the

Defendants were entered in the municipal record and house tax receipts are also in the name of the Defendants. The names of the Defendants still find place in the record of Nagar Palika Parishad, Saharanpur. Notice for assessment of the tax was also issued in the name of the Defendants by the Nagar Palika. The Defendants had been depositing the tax of the land for the time much prior to 1967 when Shyam Singh executed the fictitious sale deed in favour of Jagjeet Singh. Neither Shyam Singh nor Jagjeet Singh got their name mutated in the Nagar Palika records. The Plaintiffs have not explained as to what was the area of land in the Khewat and what were its boundaries. The Vakil Commissioner had no right to give any report regarding possession. The Plaintiffs had obtained a fictitious report from the Vakil Commissioner.

4. The Defendants also filed their objections to the injunction application in which they denied the Plaintiffs'' case. Affidavit of Jagjeet, Executive Engineer of the U. P. Power Corporation was filed in support of the objection. The Defendants also filed copies of assessment record of Nagar Palika as Annexures-1 and 2 to this affidavit to show their title to the disputed land.

5. The Plaintiff, Zakir Hasan filed rejoinder-affidavit in reply to the aforesaid counter-affidavit.

6. The learned Civil Judge (Senior Division) after hearing both the parties came to the conclusion that taking into consideration the sale deeds filed by the Plaintiffs, they had a prima facie case for injunction and they will suffer irreparable loss if injunction is not granted in their favour, and so the balance of convenience is also in their favour. He, therefore, passed an order restraining the Defendants from causing any interference in construction of boundary wall and other constructions on the disputed land shown by letters B C F K L I J H G in the plaint map by the Plaintiffs. He also restrained the Defendants from demolishing the Plaintiffs'' wall shown by letters F K L I. Aggrieved with that order, the Defendants filed this appeal.

7. We have heard counsel for both the parties and have perused the record.

8. It may be mentioned that the Defendant Appellants have in support of their stay application filed affidavit of Manoj Kumar Gaur, Sub-Divisional Officer, Electricity Urban Distribution Division-II, U. P. Power Corporation Ltd., Saharanpur and in this affidavit photostat copies of extracts from the assessment register of Nagar Palika Parishad, Saharanpur, have been filed as Annexures-1 and 2. Annexure-1 is the extract of Khasra of property No. 3/2121 to 3/2121/9 situated in Shekhupura in the name of Executive Engineer Hydro Electric Sub Station, Dehradun Road, Saharanpur, which is for the years 1967 to 1975. Annexure-2 is new assessment of the aforesaid properties for the period from 1.7.2003 to 2008. A new number 3/8109 has been allotted to the above property and the name of mohalla where it is situated has been changed as Janak Nagar. They have also filed a photo copy of the tax deposit receipt of the above property issued on 2.3.2005. Other annexures are copies of the record of Original Suit No. 76 of 2003 which

is being contested between the same parties and of the record of Original Suit No. 161 of 2005 out of which this appeal has arisen.

9. The Plaintiff Respondents filed counter-affidavit of Zakir Hasan. It has been stated in the counter-affidavit that the Defendants had not filed any objection to the Commissioner"s report and so the Commissioner"s report was binding upon them. It was further stated that the disputed property, whose sale deeds have been executed in favour of the Plaintiffs, is situate in mohalla Khan Alampura Nai Basti, and neither in Shekhupura nor in Janak Nagar. They have also filed extract of Khewat for fasli year 1409 to 1412 to show that the name of their predecessor Sardar Jagjeet Singh is entered in this khewat. It is in respect of the property situated at village Khan Alam Pura.

10. The Defendant Appellants have filed rejoinder-affidavit of P. K. Goel, Executive Engineer, Electricity Urban Distribution Division-II, U. P. Power Corporation Ltd.

11. We have gone through all these counter and rejoinder-affidavits and their annexures. It is to be seen that there appears a dispute regarding title to the disputed land between the parties. The Plaintiffs claimed to be owner of these properties by virtue of sale deeds executed on behalf of Sardar Jagjeet Singh by his attorney. On the other hand, the case of the Defendant Appellants is that this property is their own and it has been entered in their names in the record of Nagar Palika Parishad. The contention of the Plaintiff Respondents is that these extracts filed by the Defendants pertain to Janak Nagar and Shekhupura but the said property is not situated in either of those mohallas and it is situated in Khan Alam Pura. However, it is to be seen that it is admitted by the Plaintiff Respondents that there is residential colony of the Defendants towards west of eight feet wide passage, which is closely adjacent to the disputed properties claimed by them. The Defendants" assertion is that they have filed the Nagar Palika records of assessment of this residential colony and the disputed property is a part of that colony. There may be two names of same mohalla but there appears some genuine dispute regarding title to the disputed property between both the parties. Under these circumstances, we are of the view that the learned Civil Judge (Senior Division) erred in holding that the Plaintiffs had prima facie title to the disputed property.

12. When there was a genuine dispute regarding title between both the parties, the proper course for the learned Civil Judge (Senior Division) was to pass such an injunction order as may be non-injurious to both the parties. The parties could be directed to maintain status quo on the spot. They could also be directed not to demolish any construction which is standing on the spot but the injunction directing the Defendants not to cause any interference in Plaintiffs act of raising constructions on the disputed land could not be granted. In fact, grant of such an interim injunction permitting the Plaintiffs to raise construction on the disputed land, when there is a title dispute, amounts to decreeing the Plaintiffs" suit in toto and such an order could not be passed at the preliminary stage of disposal of injunction application, because after grant of this injunction, there remains nothing more to be granted in favour of the Plaintiffs at the time

of disposal of the suit. It may also be mentioned that the order permitting the Plaintiffs to raise constructions on the disputed land is going to cause irreparable loss to the Defendants, because ultimately if it is found that the Defendants are owners of the land, their rights shall be adversely affected by the Plaintiffs'' constructions. Under these circumstances, balance of convenience was also in favour of the Defendants not to grant any such injunction in favour of the Plaintiffs.

13. It was further submitted by the learned Counsel for the Respondents that according to the Commissioner''s report the Plaintiffs were in possession of the disputed land, and since the Defendants had not filed any objection against this report, the report was binding upon them. It is true that the Defendants had not filed any separate objection against this report but they have challenged this report in their counter-affidavit filed against the injunction application. It is also to be seen that under law the Vakil Commissioner has got no right to give any report on the point of possession, which is to be decided by the Court, and so the Plaintiff Respondents cannot get any benefit of this report in respect of possession over the disputed land.

14. The result, therefore, is that the appeal deserves to be partly allowed and so far as that part of the order passed by the Civil Judge (Senior Division), which restrained the Defendants from demolishing any construction on the disputed land, is concerned, that order deserves to be maintained ; but another part of his order, whereby he has restrained the Defendants from causing any interference in Plaintiffs'' act of raising construction on the disputed land, is liable to be set aside, and both the parties are directed to maintain status quo on the spot till disposal of the suit.

15. The appeal is, therefore, partly allowed and that part of the impugned order passed by the learned Civil Judge (Senior Division) whereby he restrained the Defendants from demolishing any present construction on the disputed land is upheld but another part of his order whereby he restrained the Defendants from causing any interference in the Plaintiffs'' act of raising construction on the disputed land, is set aside and it is hereby ordered that both the parties shall maintain status quo on the spot till disposal of the suit. The trial court shall make an endeavour to decide the suit as early as possible.

16. The parties shall bear their own costs of this appeal.