

(2012) 02 AHC CK 0384

Allahabad High Court (Lucknow Bench)

Case No: Misc. Single No. 717 of 2012

Smt. Kanti Devi

APPELLANT

Vs

A.D.J., Court No. 1, Bahraich and
others

RESPONDENT

Date of Decision: Feb. 4, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151

Citation: (2012) 116 RD 271

Hon'ble Judges: Surendra Vikram Singh Rathore, J

Bench: Single Bench

Advocate: Sanjeev Pandey and Gyanendra Singh, for the Appellant; Manish Kumar, for the Respondent

Final Decision: Dismissed

Judgement

Surendra Vikram Singh Rathore, J.

This writ petition has been filed challenging the order dated 6.9.2003 passed by Civil Judge (S.D.), Bahraich in O.S. No. 289 of 2003, Smt. Kanti Devi v. Shriram, and also the order dated 31.10.2011 passed by Additional District Judge, Bahraich Court No. 1, passed in Misc. Civil Appeal No. 90 of 2003 Smt. Kanti Devi v. Shriram and others. It transpires from the perusal of the orders and the documents filed along with this petition that the petitioner filed a suit for permanent injunction and an application under Order XXXIX, Rules 1 and 2 was moved for grant of ad interim injunction. Vide order dated 6.9.2003, his application for ad interim injunction was rejected. Feeling aggrieved by the said order, Misc. Appeal No. 90 of 2003 was preferred which was also dismissed. It is submitted by the learned Counsel for the petitioner that the name of the petitioner was entered in the revenue record. The petitioner was in possession of the land in dispute, therefore, the Courts below committed error in not granting interim injunction in favour of the petitioner. It is further argued that the Trial Court held a mini trial and there after he passed the impugned order which

is against law.

2. In support of his argument, learned Counsel for petitioner has placed reliance on pronouncement of the Division Bench of this Court in the case of Amir Khan v. Lucknow Development Authority Lucknow and another. 2011 (29) LCD 1695 = 2011 (6) ALR 586 (LB) In the aforesaid case in para 3, this Court held that:

After hearing the learned Counsel for parties at length, we are of the view that no finding on merit could have been recorded by the Civil Judge. It is the settled preposition of law that for grant or refusal of injunction, the Court has to look into prima facie case, balance of convenience, irreparable loss and injury. While adjudicating the similar controversy with regard to right of Courts for grant of injunction, after considering the various pronouncement of the Supreme Court in the case of Anupam Sahkari Avas Samiti Ltd. v. ADJ., Court No. 4, Lucknow and another, 2006 (62) ALR 161 it has held that while granting or refusing an application for temporary injunction filed under Order XXXIX Rule 1 of the CPC, the Court should not proceed for mini trial of the suit. Court has to accept or refuse an injunction application, in case, all the three conditions (supra) are fulfilled or not fulfilled.

Reliance has also been placed on the pronouncement of this Court in the case of Anupam Sahkari Avas Samiti Ltd. v. Addl. District Judge Court No. 4 Lucknow and another. 2006 (63) ALR 161 In the said case it was held that the power to grant interim injunction not only flow from Order XXXIX Rules 1 and 2 but also from section 151 CPC which relates to inherent power to pass necessary orders in the interest of justice. Reliance has also been placed on the pronouncement of hon"ble Apex Court in the case of Maharwal Khewaji Trust (regd) v. Baldev Dass. 2004 (57) ALR 428 In the said case it was held that the Trial Court and the High Court had permitted the respondent to raise constructions and also permitted alienation of the property and in that perspective the order of the Trial Court and the High Court were set aside and it was also observed that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party which may ultimately succeeds and may further lead to multiplicity of the proceedings.

3. This Court is in full agreement with the principle of law laid down in above mentioned cases but the perusal of the impugned order passed by Additional District Judge shows that the petitioner/plaintiff had not come before the Court with clean hands. The orders passed by the competent revenue Court with regard to the property in dispute were concealed by him and on the basis of the certificate issued by the Gram Pradhan and the other villagers, he was claiming to be in possession and owner of the property in dispute. Learned Counsel for petitioner has also placed reliance on Annexure-4 to the writ petition and the basis of it, his argument is that the name of the petitioner Smt. Kanti Devi was entered in the revenue record. Perusal of this document shows that the property in dispute was in the name of

Kailasha wife of Patan and vide order dated 7.1.1996 passed by Naib Tahsildar, the name of the petitioner was mutated. The perusal of the impugned order shows that subsequently there was again litigation in revenue Court and the fact that the orders passed thereon were concealed by the petitioner. Relief of interim injunction is a relief of equity and a person who does not come with clean hands before the Court is not entitled to such relief.

4. In the case of S.M. Dyechem Ltd. v. Cadbury (India) Ltd., AIR 2000 SC 2114 the Hon"ble Supreme Court considered the principle governing the grant of temporary in-junction, observing that the three basic principles i.e. prima facie case, balance of convenience and irreparable injury, have to be considered in a proper perspective in the facts and circumstances of a particular case and in case the principles have not been properly applied, the Appellate Court can interfere in an interlocutory proceedings under Order XXXIX, Rules 1 and 2 of the Code.

5. In the case of Anand Prasad Agarwala v. Turkeshwar Prasad and others, 2002 (48) ALR 295 (SC) the Hon"ble Supreme Court restated the principles for grant of temporary injunction, but observed that it may not be appropriate for any Court to hold a mini trial at the stage of grant of temporary injunction. That was a case where the temporary injunction was refused to a person who was in possession of the land.

6. In the case of [Hindustan Petroleum Corporation Ltd. Vs. Sri Sriman Narayan and Another](#), the Hon"ble Supreme Court explained the purpose of grant of temporary injunction, observing as under:

It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court.

While exercising the discretion the Court normally applies the following tests:

(i) whether the plaintiff has a prima facie case;

(ii) whether the balance of convenience is in favour of the plaintiff; and

(iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial.

The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at

the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies. [See [Special Land Acquisition Officer and Others Vs. Mallanagouda Rayanagouda Patil and Others,](#)]

In [National Airport Authority and Others Vs. Vijaydutt,](#) it was held as under:

Apart from what has been stated above, relief of temporary injunction is an equitable one and is in the domain of the courts' judicial discretion. Therefore, even where the three well-known conditions (prima facie case, balance of convenience and irreparable injury) requisite for grant of the relief exist, the Court, on the facts and in the circumstances of the case, in exercise of its discretion judiciously, may still refuse the relief as where there has been delay and the party applying for the relief has not come with clean hands.

In view of the aforementioned legal situation, since in the facts of the present case, the petitioner has not come before the Court with clean hands, therefore, the Courts below have not committed any illegality in refusing the relief of injunction to him. Therefore, in view of the aforesaid discussion, the present petition sans merits and deserves to be dismissed and is accordingly dismissed.