

(1987) 08 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7219 of 1987

Megh Nath and Others

APPELLANT

Vs

Addl. Civil Judge and Others

RESPONDENT

Date of Decision : 18-08-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 08 AHC CK 0055

Hon'ble Judges : S.K. Mookerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mookerji, J.—Heard learned Counsel for the Petitioners.

2. Brief facts of the case are that some trees were allegedly planted by the Petitioners on the oral permission of Respondents 3 and 4. Since Respondents 3 and 4 have threatened to cut away the trees, hence the Petitioners prayed for a temporary injunction in the suit. Learned Counsel for the Petitioners states that, in case, the Respondents are permitted to cut away the trees and an order of injunction is denied to the Petitioners then not only the suit shall become infructuous but the Petitioners shall suffer irreparable loss and injury. Both the courts below have considered the prayer for temporary injunction and rejected the same on merit, hence this writ petition.

3. In the writ petition normally this Court shall not upset the finding of facts based on materials on record and substitute a different finding of fact. Further before an injunction can be granted to the Petitioners it is the burden of the Petitioners to make out a prima facie case that they have a legal right in respect of the property in suit and some injury has been caused or apprehended to be caused to such legal right. In the present case, the Petitioners shall have to establish their licence based on oral permission as alleged and further shall have to prove that the trees were planted by them or by their ancestors and they have

legal right on such trees and there is some reasonable apprehension of injury to the legal right. There are various other considerations for the grant of an injunction, e. g. burden of inconvenience of parties, whether the injury if caused by refusal of injunction can be adequately compensated etc. To grant a temporary injunction is not a matter of rule but it is granted under compelling or exceptional circumstances. The appellate court in its order dated 08.12.1986 has clearly indicated that there is no evidence that the Defendants had orally granted permission to the the Plaintiffs to plant trees and had agreed to give half share in the woods and fruits. This finding cannot be upset in the writ jurisdiction under Article 226 of the Constitution unless it is apparent on the face of the record that such a finding has been recorded without any material on record. Further I hold that injury, if any, is caused to the Petitioners by refusal of the prayer for injunction, can be adequately compensated. The Petitioners have thus failed to establish a prima facie case and the orders of the courts below are quite legal and cannot be interfered in writ jurisdiction.

4. In view of the above circumstances this writ petition is devoid of merit and is, accordingly, dismissed. Interim order passed by this Court on 27.04.1987, is vacated.

5. A certified copy of this order shall be issued to the learned Counsel for the Petitioners on payment of usual charges within a wck.