

**(2014) 11 UK CK 0002**

**In the Uttarakhand High Court**

**Case No :** Writ Petition Nos. 1398, 2911 of 2013 and 439 of 2014 (M/S)

Nauman Ahmad and Others

APPELLANT

Vs

Harun and Others

RESPONDENT

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**Date of Decision :** 26-11-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

**Citation :** (2015) 2 UC 1367

**Hon'ble Judges :** Alok Singh, J

**Bench :** Single Bench

**Advocate :** Lok Pal Singh, Advocate for the Appellant; Devendra Pant, Advocate for the Respondent;

**Final Decision :** Dismissed

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## **Judgement**

Alok Singh, J.

1. All these three petitions are interconnected and arising out of O.S. No. 55 of 2006, Mohd. Harun Vs. Nauman Ahmad & others, pending in the Court of Civil Judge (S.D.), Haldwani, district Nainital. Since, in all the petitions, identical questions of facts and law are involved, therefore, with the consent of learned counsel for the parties, present petitions are heard together and are being disposed of by this common judgment. Brief facts of the case, inter alia, are that Mohd. Harun, plaintiff filed suit for cancellation of sale deed as well as permanent prohibitory injunction against Nauman Ahmad and two others. An ad interim injunction application, paper No. 6-C2, was also moved by the plaintiff to restrain the defendants in making any interference in the possession of the plaintiff over suit property. Defendants preferred their written statement along with an ad interim injunction application, Paper No. 35 C, restraining the plaintiff in making any interference in the possession of the defendant Nos. 1 & 2 over the suit property.

2. Learned Trial Court, vide order dated 16.2.2008, was pleased to allow

application seeking ad interim application, paper No. 6-C2, moved by the plaintiff, however, application moved by defendant Nos. 1 & 2 seeking ad interim injunction against the plaintiff protecting their possession was neither discussed nor decided by the Trial Court. Feeling aggrieved, defendants filed Misc. Civil Appeal No. 8 of 2008 assailing the order dated 16.2.2008. Misc. Civil Appeal, so filed, was allowed by the Appellate Court, vide judgment dated 12.10.2009. It was specifically observed by the Appellate Court that learned Trial Court committed illegality while deciding the ad interim injunction application, paper No. 6-C2, moved by the plaintiff and by not deciding the contrary ad interim injunction application moved by defendant Nos. 1 & 2, paper No. 35C therefore, learned Trial Court should decide both the application, together. After the judgment passed in the appeal, one Jagdish Chandra @ Jagdish Prasad, moved an application seeking impleadment under Order 1 Rule 10 CPC before the Trial Court saying that he has purchased part of the property from the plaintiff during the pendency of the suit, therefore, he should be impleaded as party.

3. Learned Trial court, vide order dated 3.6.2010 was pleased to allow impleadment application so moved by the subsequent purchaser, namely, Jagdish Chandra @ Jagdish Prasad and was further pleased to allow the application moved by defendant Nos. 1 & 2, paper No. 35C, directing the parties to maintain status quo. It is important to mention here that this time too, learned Trial Court decided only one ad interim injunction application moved by defendant Nos. 1 & 2, paper No. 35C, and left ad interim injunction application moved by the plaintiff, paper No. 6C2, undecided. Again, the order dated 3.6.2010 was challenged before the Appellate court in Misc. Civil Appeal No. 31 of 2010, which was allowed vide judgment dated 29.6.2011 again directing the Trial court to decide both the applications together seeking ad interim injunction against each other moved by the plaintiff as well as moved by defendant Nos. 1 & 2.

4. In my considered opinion, since plaintiff as well as defendant Nos. 1 & 2 are seeking ad interim injunction against each other protecting their alleged possession over the property in question, therefore, both the applications ought to have been decided by the Trial Court together avoiding conflicting views on both the applications. Therefore, order dated 29.6.2011 does not call for any interference. Moreover, since, Jagdish Chandra @ Jagdish Prasad has purchased part of the suit property during the pendency of the civil suit, therefore, although he would stand in the shoes of the vender plaintiff and would be bound by the order/judgment passed in favour or against his vender, however, since he has already been impleaded, therefore, he should also be heard in the suit.

5. At this stage, learned counsel for the parties fairly submitted that parties shall maintain status quo qua the session and nature of the property as on day and shall not create third party interest over the property in dispute during the pendency of the suit, therefore, Trial Court be directed to decide the suit itself at its own merit in accordance with law within such time as this Court deems fit.

6. Present petitions, thus, stand disposed of with direction that both the parties

shall maintain status quo qua the possession and nature of the property as on day and shall not create third party interest over the property in dispute during the pendency of the suit. Learned Trial Court shall explore every possibility to decide the suit itself in accordance with law at its own merit, preferably within one year from the date copy of this order is communicated to the Trial Court. Trial Court is further requested not to grant any unnecessary adjournment to either of the parties.

7. No order as to costs.

8. CLMA Nos. 14073 of 2014, 1632 of 2014 as well as IA No. 4298 of 2014 also stand disposed of accordingly. Let copy of this judgment be kept in all the connected writ petitions.