

(2010) 12 J&K CK 0009
In the Jammu And Kashmir High Court
Case No : CIMA No. 232 of 2010

Umar Hayat Khan and Another	Vs	APPELLANT
Talat Sarver Khan and Others		RESPONDENT

Date of Decision : 09-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2011) 1 JKJ 531

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—Challenge in this appeal is to order dated 30.3.2010 passed by Principal District Judge, Poonch in File No.

18/Misc, titled as Umar Hayat Khan and Anr. v. Talat Sarver Khan and Ors., dismissing the application for grant of ad-interim relief/temporary injunction (for short, hereinafter impugned order).

2. Appellants/Plaintiffs filed a suit before the Principal District Judge, Poonch for specific performance of agreement to sell dated 13.10.2010,

allegedly executed by father of Respondents/Defendants 1 to 5 and husband of Respondent/Defendant No. 6 in favour of Appellants/Plaintiffs, and

for permanent injunction restraining the Respondents from causing any interference or raising any construction over the suit land. Alongside the suit,

the Appellants/Plaintiffs filed an application for grant of ad-interim relief/temporary injunction. The Respondents/Defendants filed the written

statement and resisted the suit on the grounds taken in it. It is averred that Appellants/Plaintiffs have no right, title or claim whatsoever over the suit

property and Defendants are owners in possession of the same. Neither father of Respondents/Defendants 1 to 5 and husband of

Respondent/Defendant No. 6 executed any document-agreement to sell nor sold any plot of land by way of any document to the

Appellants/Plaintiffs. The so called agreement to sell is fabricated one. It was neither produced during the lifetime of Sajid Sarwar Khan nor

shown. Appellants/Plaintiffs had already filed a suit before the learned Munsiff Mendhar for grant of permanent injunction for the same subject

matter and against the same Defendants and alongside the suit, also filed an application for temporary injunction which was dismissed on

28.2.2009. The Appellants/Plaintiffs without assailing the said order have filed a fresh suit before the District Judge, Poonch on 2.3.2009, which is

hit by Order 2 Rule 2 of the Code of CPC (for short, CPC).

3. The Plaintiffs have suppressed the material facts, so no interim relief can be granted only on the ground that they have not come with clean

hands. The trial court after hearing the parties dismissed the application for grant of interim relief vide impugned order dated 30.3.2010.

4. Admittedly, the Plaintiffs have not disclosed in the plaint about the pendency of suit for permanent injunction between the parties on the same

subject matter before Munsiff Mendhar and also have not disclosed the fact that the application for grant of interim relief stands rejected by the trial

court vide order dated 28.2.2009. On running page 5 of the said order the learned Munsiff Mendhar has recorded as under:

I have considered the arguments advanced by the Ld. Counsel for the parties and perused the whole record on the file minutely and came to an

inescapable conclusion that the applicants are not in possession of suit property and hence they have no prima facie case in their favour.

5. Appellants/Plaintiffs have not challenged the prima facie finding recorded by the learned Munsiff (supra).

6. It appears that Plaintiffs after filing of the suit before the District Judge obtained the order of status-quo and withdrew the suit from the Court of

Munsiff Mendhar on 9.3.2009 unconditionally after a lapse of one month.

7. It is beaten law of the land that a person who seeks equity must do equity. He has to disclose all the facts for and against. In the instant case the

Plaintiffs have not disclosed all the facts and have withheld the material

particulars of filing of suit, dismissal of injunction application and the prima facie finding that they are not in possession, thus are not entitled to any interim relief.

8. My view is fortified by a judgment of this Court delivered in case Abdul Karim and Ors. v. State and Ors. 2006 (2) SLJ 677. It is apt to

reproduce para 14 & 20 herein:

14. Apex Court in case titled as M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, has observed that conduct of a

party who claims equitable relief should be free from any blame. Further observed that if the conduct of a party is not free from blame he is not

entitled to discretionary relief. Applying the test to the instant case, Petitioners have concealed the material facts and by hook or crook had tried to

stall the installation of receiving station, which is against the public interest. It is profitable to reproduce para-50 of the said judgment herein, which

reads as under:

50. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted

earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, Jurisdiction of the Court to interfere with an order of interlocutory or

temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the

conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is

wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not

responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom

he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order

of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating

the ad-interim temporary injunction order already granted in the pending suit or proceedings.'

20. Plaintiffs/Appellants have failed to disclose all the facts as discussed hereinabove, thus, no equitable relief can be granted in their favour.

In the given circumstances, it cannot be said that Plaintiffs have a prima facie case.

9. The Apex Court in *Narendra Kante v. Anuradha Kante* AIR2010 SCW 305 has held that while considering the case for grant of interim

equitable relief, the court has not only to keep in mind the three principles, i.e., prima facie case, balance of convenience and irreparable loss, but

also has to keep in mind the conduct of the parties.

10. The Apex Court in *Kishorsinh Ratansinh Jadeja v. Maruti Corpn.* AIR2009 SCW 5236 and *Mandali Ranganna v. T. Ramachandra* AIR2008

SCW 3817 has laid down the same principle.

11. Keeping in view the facts of the case and conduct of Appellants/Plaintiffs, the Plaintiffs are not entitled to any relief and the trial court has rightly

passed the impugned order. The Appellants/Plaintiffs have annexed copies of extract of khasra girdawari, which indicate that they are in possession

of the suit land due to relationship (Bawajah Rishtedari) . It is not recorded in the revenue records that the Plaintiffs are in possession in terms of

agreement to sell, so it casts cloud. It is also apt to mention herein that the Respondents/Defendants have challenged that entry before higher

revenue authority and came to be stayed, which is also discussed by the trial court at page 6 of the impugned judgment.

12. Whether the second suit is maintainable despite the fact that the Plaintiffs have withdrawn the suit from the Court of learned Munsiff

unconditionally after a lapse of one month?

13. Same point came up for consideration before this Court in *Ramesh Chander v. Rakesh Kumar* 2008 KarLJ 205. The facts of the case are

almost similar. The court discussed the filing of suit for grant of permanent injunction simplicitor without claiming relief for specific performance

which was available at that time and thereafter filing the subsequent suit without obtaining leave. It is apt to reproduce para 20 herein.

20. The above authority can have no application in the instant case, because the previous suits have not been dismissed on the ground that the relief

of injunction claimed in the suits was not the proper remedy. The previous suits were dismissed because in addition to the relief of injunction, the

Respondents- tenants had not claimed the relief of specific performance of the agreement, a relief which undisputedly was available to them at the

time they filed the previous suits. It is only where the remedy sought in the previous suit is found to be not the proper remedy the bar of Order 2,

Rule 2 would not apply to the subsequent suit filed for obtaining the proper remedy, as remedy which is not proper cannot be termed as available

relief. But when the relief sought in a previous suit is one of the reliefs available on the same cause of action, the subsequent suit for the reliefs

though available but not claimed would be hit by the bar of Order 2 Rule 2 CPC.

14. The order passed by the trial court cannot be interfered with unless the order is bad or abuse of the process of law. The Apex Court in Skyline

Education Institute (Pvt.) Ltd. v. S. L. Vaswani AIR2010 SCW 628 has laid down the same principle. It is apt to reproduce para 16 herein:

16. The ratio of the above noted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of

temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is

supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for

the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.

15. In the given circumstances I am of the considered view that the trial court has passed a reasoned order and needs no interference. Accordingly

the appeal filed by the Appellants/Plaintiffs is dismissed alongwith all CM Ps.