

(2011) 04 AHC CK 0324
In the Allahabad High Court
Case No : Writ Petition No. 2240 of 2011 (M/S)

Zuber and Others

APPELLANT

Vs

Shameem and Others

RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

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

Citation : (2011) 04 AHC CK 0324

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Satish Chandra, J.—The present petition has been filed assailing the judgment and order dated 22.3.2011 passed by Additional District Judge, Gonda in Civil Appeal No. 16 of 2011 Anwar Hussain and Ors. v. Shamim and Ors. where he has confirmed the judgment and order dated 5.2.2011 passed by the Additional Civil Judge-III (J.D.), Gonda which resulted that the application No. C-2/7 moved by the Petitioner-Plaintiffs has been rejected for restoring an ex parte order for temporary injunction.

2. Sri Indrajeet Shukla, learned Counsel for the Petitioners, submits that the Petitioners-Plaintiffs filed a suit for permanent injunction bearing Suit No. 810 of 2010 against the Respondents-Defendants No. 1 to 3 with regard to the land in question. Along with the suit, the Petitioners-Plaintiffs also filed an application under Order 39 Rule 1 and 2 CPC for grant of interim injunction which was granted. Later, it was vacated by the Additional Civil Judge (J.D.)-III and the same was confirmed by the Additional District Judge, Gonda.

3. He also submits that the land in question is in possession of the Petitioners-Plaintiffs. According to him, an interim order may be passed for maintaining the status quo by quashing the impugned orders (Annexures No. 1 and 2). He further submits that the Petitioners are in peaceful possession over the land in

question. Prima facie balance of convenience is in favour of the Petitioners. According to him, in any event of the matter, till the disposal of the suit, the status quo of the land in dispute has to be maintained and as such the learned courts below have committed an error in not ordering for maintaining status quo. Lastly, he made a request to set aside the impugned orders.

4. After hearing learned Counsel for the Petitioner at length and on perusal of the record, it appears that on 12.5.2010, the trial court passed an interim order which was 2 ex parte. Thus, an interim order/injunction was passed ex parte. All the parties in the suit/petition are related to each and are resident of the same village. They are also involved in a criminal case. The trial court vacated the ex parte stay order after hearing the opposite-parties.

5. Earlier, the trial court passed the stay order on 12.5.2010, but the said order was passed ex parte which was vacated by the trial court vide impugned order dated 29.3.2011 for the reasons mentioned in its order. From the order, it appears that the Petitioners have claimed to have purchased a house across the road but the Petitioners-Plaintiffs were unable to produce any paper/document pertaining to the said property. Similar position was also emerged from the Commissioner's report. In the Commissioner's report, it was mentioned that the disputed land is adjacent to the land of the opposite-parties and not to the property of the Petitioner. The land in dispute is claimed as an ancestral land. When the Petitioners have failed to prove the balance of convenience in their favour, the trial court has vacated the interim order. The finding of the trial court was also upheld by the Appellate court. Thus, ex parte interim order was rightly vacated by the courts below after hearing parties and examining Commissioner's report. The same appears reasonable in the peculiar facts and circumstances of the case.

6. By considering the totality of the facts, I find that the findings recorded by the lower courts are enough to pass the impugned order. Hence, no interference is required by this Court.

7. However, I direct the trial court to dispose of the suit in question expeditiously and preferably within a period of one year, provided parties will cooperate.

8. Further, the Registrar of this Court is directed to send the copy of this order to the concerning court immediately.

9. With the above observations, the writ petition is disposed of.