

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...
FAO no.09/2021

Reserved on: 27.05.2022

Pronounced on: 18.10.2022

Mohammad Shaban Wani and others

.....Appellant(s)

Through: Mr Z.A.Shah, Sr. Advocate with
Ms Humaira Shafi, Advocate

Versus

Mst Jana and others

.....Respondent(s)

Through: Mr G.A.Lone, Advocate with
Mr Mujeeb Indrabi, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. In this appeal, Order dated 22nd February 2021, passed by Principal District Judge, Budgam, whereby the court of Principal District Judge, Budgam, in a civil suit titled as *Mst Jana v. Mohammad Shaban Wani and others*, has restrained defendants before it, i.e., present appellants and respondents 2 to 5, from alienating, creating any third party interest or changing the nature of the suit property till final disposal of the main suit, is under challenge on the grounds mentioned therein.
2. I have heard learned counsel for parties and considered the matter.
3. Learned senior counsel appearing for appellants, after making submissions with regard to facts of the case, has submitted that in view of the facts and circumstances of the case the Trial Court could

not have passed the impugned order of injunction. He contends that succession with respect to the property in question opened in the year 1954, when Ahmad Wani passed away and it is after more than 66 years, i.e., in October 2020, that respondent no.1 instituted a suit, claiming that property is joint and this aspect of the matter has been ignored by the Trial Court. It is also stated that the Trial Court had ignored that within the period of 66 years mutation was effected in the year 1960 and 1973 and none of the parties questioned these mutations either before revenue authorities or otherwise and that existence of mutations clearly establish that appellant no.1 was in possession of whole property to the exclusion of respondent no.1 and his other sisters. It is also contended that the Trial Court has lost sight of the facts and legal position that claimant to property of late Ahmad Wani at no point of time right after 1954 have claimed their share in the property and on the contrary, appellants had established prima facie that sharing was done between appellant no.1 and respondent no.1 in accordance with customary law as was prevalent at that point of time which law finally and conclusively determined rights of parties.

4. According to learned senior counsel for appellants, when plaintiff/respondent no.1 attained majority, the whole property left behind by Ahmad Wani was partitioned and it was in the year 1973 that respondent no.1 out of love, affection and freewill orally gifted away her share of property falling under Khewat no.14 & 15 by virtue of mutation no.244 dated 1st April 1973, to appellant no.1 as being her

sole brother, who accepted and took possession thereof and since then was in actual and physical possession without any interference or claim. Besides, appellant no.1 received consideration/compensation amount in lieu of acquisition of land measuring 03 Kanals, approximately, by the Government of J&K through Railway Department. It is also contended that plaintiff being fully aware about the fact that she had already orally gifted through public declaration of her share to appellant no.1, as such, she did not make any objection or claim before competent authorities at the time of acquisition of land by Railway Department and also when appellant no.1 sold a portion of land way back in 2002. Learned senior counsel also submits that order impugned has created confusion as it is the case of appellants that shops stand alienated except to the extent retained by children of appellants 2 to 4 and under law whatever interests' tenants have, they have already been created and insofar as changing nature of suit property is concerned, it is a vague expression.

5. *Per contra*, learned counsel for respondent no.1 has stated that respondent no.1 is real sister of appellant no.1 and appellants 2 to 4 are daughters-in-law of appellant no.1 and that after death of father of appellant no.1 and respondent no.1, the property left behind him devolved upon appellant and respondent no.1. It is also stated that although plaintiff/respondent no.1 approached defendant/appellant no.1 for her share from the property left behind by their father, but he declined, so she approached Patwari concerned in order to obtain extracts in this regard and after obtaining the revenue papers, she

came to know that defendant/appellant no.1 at the back of respondent no.1/ plaintiff got sale deeds registered in favour of his daughters-in-law. Respondent no.1 applied for certified copies of sale deeds, which were provided to her on 30th September 2020. According to learned counsel, respondent no.1 is entitled to one share and appellant no.1 is entitled to two shares as per Muslim Personal Law, which entitlement of respondent no.1 cannot be denied by appellant. He also states that grant of interim relief by the Trial Court is to save the Lis.

6. In any civil dispute a Court has wide range of powers to deal with various aspects of litigation and at various stages of litigation. In a civil dispute parties file interlocutory applications seeking relief at various stages of litigation. For example, condone delay in filing a case; to grant *ex parte* injunction; to reject plaint; to appoint a commissioner to ascertain factual aspects on ground; to implead / to delete a defendant; to recall a witness; to mark a document, etc. Various provisions of CPC guide the Courts to deal with such applications. Order XXXIX of CPC is one such provision. It is comprehensive, dealing with various contingencies, viz., to grant, to vary the order already granted, to seek enforcement of the order so made, interim custody/protection/sale of suit property/assets, etc.
7. The settled principle is that while passing an interim order of injunction under Order XXXIX Rules 1 and 2 of CPC, the Court needs to note three basic principles, namely, (a) prima facie case, (b) balance of convenience / inconvenience, and (c) irreparable loss and injury. The courts do not view consideration of applications for

temporary injunctions as a matter of course or right, but one that requires serious pondering. Considering these principles is not mere rhetoric but have to be established beyond doubt in order to warrant interim relief. Along with these essential requirements interim relief is also viewed as an equitable and discretionary relief, where conduct of party will also be examined. It is also settled principle that making out prima facie case is not sufficient in the grant of interim relief. Court must also find that along with prima facie case, refusal to grant the relief will cause injury to the petitioner and in such a manner that it would be irreparable in future course.

8. At the stage of considering injunction application, the court cannot hold that plaintiff is most likely to succeed in the suit and the court is only required to assess whether, prima facie case is made out on the dispute raised in the suit, and whether a triable issue is made out. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Once this exercise is undertaken, Court then proceeds to assess whether balance of convenience is in favour of plaintiff, whether not granting injunction would result in greater harm to plaintiff which cannot be remedied at the time of passing judgment and decree and to weigh whether mischief or inconvenience likely to cause to plaintiff if injunction is not granted is greater than granting the injunction.

9. In the present case, the Trial Court while passing impugned order has discussed all aspects of the matter as was required for considering and deciding the application for grant of *ad interim* relief and in order to save the Lis, has passed order impugned, which need not be interfered with by this Court and resultantly the appeal is liable to be dismissed.
10. For the reasons discussed above, the appeal is without any merit and is, accordingly, **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.
11. Copy of this judgement be sent to the Trial Court with the record, if any, summoned/received from the Trial Court.

(Vinod Chatterji Koul)
Judge

Srinagar

18.10.2022

Ajaz Ahmad, PS

Whether approved for reporting? Yes/No.

