

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.2267 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Navam Mehrotra, Advocate, for the petitioner. A very peculiar situation has arisen, where the present petitioner, who is the successor of the principal plaintiff, had instituted a Suit, being Suit No. 110 of 2020, Jarifan Vs. Bholu and others, for the grant of decree of the permanent injunction, thereby restraining the respondent not to alienate ½ of the share of the property. In the suit in question, the respondent had filed a written statement, along with Order 8 Rule 6-A, raising a counter claim before the learned Trial Court, which was supported with application under Order 39 Rules 1 and 2 of the CPC. The learned Trial Court, while considering the application under Order 39 Rules 1 and 2, had passed the following orders :- “वादिनी का प्रार्थनापत्र वास्ते अस्थाई निषेधाज्ञा कागज संख्या-7ग खारिज किया जाता है। प्रतिवादीगण का अस्थाई निषेधाज्ञा प्रार्थनापत्र कागज संख्या 24ग वादिनी के विरुद्ध स्वीकार किया जाता है तथा वादिनी को दौराने वाद अस्थाई रूप से निषिद्ध किया जाता है कि वह प्रश्नगत सम्पत्ति में प्रतिवादीगण के कब्जे व इस्तेमाल में किसी प्रकार का हस्तक्षेप न करें व करावे। पत्रावली दिनांक 07.12.2020 को प्रतिवादी संख्या-3 के जवाबदावा हेतु पेश हो।” As a consequence of the order dated 7th November, 2020, the application under Order 39 Rules 1 and 2, preferred by the plaintiff / petitioner with the suit, herein, was rejected. While the application preferred under Order 39 Rule 1 and 2, being paper No.24-Ga by the defendant, in the counter claim, which is a suit in itself, under Order 8 Rule 6-A (4), was granted. The grant of injunction to the defendant in a counter claim under Order 8 Rule 6-A, was not challenged by the petitioner by filing an appeal under Order 43 Rule 1 (r) of the CPC. What he has confined, is to a challenge given

			by him to the rejection of his application under Order 39 Rules 1 and 2 by filing a Misc. Civil Appeal No. 41 of 2020, Jarifan Vs. Bholu and others, which too, has been dismissed by the Appellate Court by an order dated 10th January, 2023. Since there is a concurrent rejection of an application under Order 39 Rule 1 and 2 of the plaintiff / petitioner in Suit No. 110 of 2022, in a Writ jurisdiction under Article 227 of the Constitution of India, that has got a very limited scope of interference in the light of the Full Bench judgment of Allahabad High Court, as reported in AIR 1991 Allahabad (FB) 114, Ganga Saran Vs. Civil Judge, Hapur, Ghaziabad and others. But still, even if that is to be overlooked, then too, this Court, cannot consider, the aspect of grant of injunction to the plaintiff / petitioner for the reason being, that the embargo of an order dated 7th November, 2020, would come into play, where the defendant has already been granted a temporary injunction and which has not been put to challenge by the petitioner by filing of an independent misc. appeal under Order 43 Rule 1 (r) of the CPC. In these situations, granting of any injunction will be in contradiction to the injunction order of 7th November, 2020, granted in a proceeding under Order 8 Rule 6A, which is an independent plaint, not challenged. While dismissing this Writ Petition, it will be open for the petitioner to put a challenge to the injunction order granted in favour of the defendant in the proceeding drawn by him under Order 8 Rule 6A of the CPC, before the Court of Civil Judge, Senior Division. Subject to the aforesaid, the Writ Petition stands dismissed. (Sharad Kumar Sharma, J.) Dated 28.08.2023 Shiv
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