

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 199 of 2026

Smt. Phool Jahan and others

.....Appellants

Versus

Shri Mohd. Zaid Rafi Ansari

.....Respondent

Present:-

Mr. Rakshit Joshi, Advocate with Ms. Swaleha Hussain, Advocate for the appellants.

Mr. Rajat Mittal, Advocate for the respondent.

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this appeal is made to the order dated 03.02.2026 passed in Original Civil Suit No. 28 of 2026, Mohd. Zaid Rafi Ansari v. Smt. Phool Jahan and others, by the court of Civil Judge (Senior Division), Vikasnagar, District Dehradun ("the suit"), by which *ex parte* temporary injunction was granted at the stage of filing of the suit.

2. Heard learned counsel for the parties and perused the record.

3. The respondent filed the suit for recovery of Rs. 1,25,00,000/-from the appellants as well as the permanent injunction and the allied reliefs. According to the respondent, the appellants executed an agreement to sale with regard to the suit property with him, on 20.09.2018. The appellants also took money from the respondent and put the respondent into possession of the suit property on 26.09.2018. The respondent is in possession of the suit property since then. The appellants did not execute the sale deed despite repeated reminders. Subsequently, money was also given by the respondent to the appellants, but finally, the appellants refused to

execute the sale deed and threatened that they would alienate the suit property. With these and other averments, the respondent filed the suit for recovery of money, which according to him, he had paid to the appellants. Relief of permanent injunction was also sought to the effect that the appellants be restrained from interfering into the possession of the respondent over the suit property. Along with the plaint, an application for interim injunction was also filed, on which the court on the date of filing of the suit, restrained the appellants to transfer the property to any person. It is impugned.

4. Learned counsel for the appellants submits that the *ex parte* temporary injunction cannot be granted in such a suit because the agreement to sale, on which the respondent has relied on, is unregistered; it does not bear any legal sanctity; moreover, it does not bear the original signature of the appellant. It is also argued that the suit is much delayed, barred by limitation; the appellants are recorded tenure holder of the land in suit; they are in possession of it. He also argued that the respondent has not filed a suit for specific performance of the agreement; simply in the money recovery suit, such temporary injunction cannot be granted.

5. On the other hand, learned counsel for the respondent submits that even in the money suit, temporary injunction may be passed. He would refer to the judgment of the Rajasthan High Court in the case of M/s Cosmopolitan Trading Corporation v. M/s Engineering Sales Corporation & ors, 2001 AIR (Raj) 331 and the judgment of Calcutta High Court in the case of Prabha Surana v. Jaideep Halwasiya (GA 2 of 2021).

6. In the case of Cosmopolitan Trading Corporation (*supra*), the Hon'ble Rajasthan High Court observed that injunction can be granted in a suit for recovery of money where the court is satisfied that the defendant threatens or intends to remove or dispose of his property.

7. In the case of Prabha Surana (*supra*), the Hon'ble Calcutta High Court has observed that **"the Court has the option to pass orders as it deems fit and on the satisfaction that circumstances warranting preservation of the property exist till the matter advances beyond the preliminary stage"**.

8. Learned counsel for the respondent also argued that in their written statement, the appellants have admitted the execution of the agreement to sale and receipt of some of the payments. It is argued that, in fact, the respondent is in possession of the suit property and in case he is dispossessed and the property is sold, it would be difficult for the respondent to get the fruit of the decree that may be passed in his favour.

9. On the question of temporary injunction, the law is well settled. The Court is to test three elements, namely, *prima facie* case, balance of convenience and irreparable loss. Granting *ex parte* injunction requires a little more consideration. Such *ex parte* injunction without notice to the opposite party may be granted only when the court is satisfied that the object of granting injunction will be defeated by delay.

10. Admittedly, the agreement is unregistered. The Court wanted to know from the learned counsel for the respondent as to how

a suit may be based on an unregistered document, which requires registration under Section 17 of the Registration Act, 1908? He would submit that the factum of execution of agreement to sale has been admitted by the appellants, though this is rebutted by the learned counsel for the appellants saying that it has not been admitted by the appellants.

11. The Court, at this stage, is not venturing into the effect of non-registration of a document, which requires mandatory registration. The law on that aspect is well settled and this Court has no doubt that the court below will consider it at an appropriate stage.

12. The Court wanted to know from the learned counsel for the respondent as to how did he come in the possession of the property, as it has not been recorded in the agreement to sale that the position has been delivered? To it, the learned counsel for the respondent would submit that there is no such endorsement made in the agreement to sale. But, he submits that when subsequently some money was paid to the appellants, they put the respondent into the possession of the suit property. But, there is no document to it.

13. The appellants are admittedly the recorded tenure holder of the land in suit. There is no document revealing that the possession was ever given by the appellants to the respondent. The agreement was allegedly written in 2018. It is almost after 8 years, the suit for recovery has been filed along with injunction. This Court refrains to make a deeper scrutiny. While an injunction application is to be decided, all the factors as enumerated above, have to be considered. This Court may proceed to decide the injunction application, but it is

stated that the objections to the temporary injunction application have already been filed in the suit.

14. Having considered, this Court is of the view that this is not a case, which may enable the court to grant injunction without notice to the opposite party. Therefore, the impugned order warrants interference.

15. The appeal is allowed. The impugned order dated 03.02.2026 is set aside.

16. Since it is stated that the objections have already been filed, the court below shall consider the objections filed by the appellants and decide the application under Order 39 Rules (1) & (2) of the Code of Civil Procedure, 1908, after hearing both the parties.

(Ravindra Maithani, J.)
12.06.2026

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