



2026:AHC:203688

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 263 of 2016

Smt. Pushpa Devi @ Pushpa Shukla And 2 Ors.

.....Appellant(s)

Versus

Shreekrishna

.....Respondent(s)

Counsel for Appellant(s)	: Ashish Kumar Srivastava, Saurabh Raj Srivastava
Counsel for Respondent(s)	: Arun Kumar Misra, Arvind Srivastava, Avinash Jaiswal, Bhanu Bhushan Jauhari, Mayank Pratap Singh, Rahul Agarwal

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Heard Sri Saurabh Srivastava, learned counsel for appellant and Sri Bhanu Bhushan Jauhari, learned counsel for respondent.
2. The present appeal is directed against the judgment and order dated 29.10.2015 passed by the learned Civil Judge (Senior Division), Allahabad, in Original Suit No. 106 of 2015 (Sri Krishna Vs. Pushpa Shukla and 2 Others), as well as the formal order dated 29.10.2015 passed by the learned Civil Judge (Senior Division), Allahabad, in the aforesaid suit.
3. For the sake of convenience, the parties shall hereinafter be referred to by their respective nomenclature as assigned in the original suit, i.e., the appellants as the defendants and the respondent as the plaintiff.
4. From a perusal of the pleadings of the parties, it is undisputed that the dispute between them relates to the ownership and possession of House No. 502/2/12, Allapur, District Allahabad (hereinafter referred to as the "disputed property"). It is admitted that the disputed property belonged to Sri Ram Kishore Tiwari, who was the father of defendant No. 1, Smt. Pushpa Devi, and the maternal grandfather of the respondent, Sri Krishna, and defendant No. 2, Smt. Neha Shukla. Shri Krishna and Smt. Neha Shukla are the son and daughter, respectively, of defendant No. 1, Smt. Pushpa Devi Tiwari.
5. According to the pleadings, late Sri Ram Kishore Tiwari executed a

registered Will on 08.05.1984, making a disposition of the disputed property. It was provided therein that he would remain the absolute owner of the property during his lifetime and, after his death, the property would devolve upon his wife, Smt. Raji Devi, provided she was alive at the time of his death. It was further provided that, after the death of his wife, the entire property would devolve upon his daughter, Smt. Pushpa Devi, and her son and daughter, namely, Sri Krishna and Smt. Neha Shukla, subject to the condition that Smt. Pushpa Devi would have no right to sell the property and would have only a life interest therein.

6. Thereafter, another registered Will was executed by late Sri Ram Kishore Tiwari on 19.12.2008, whereby he cancelled his earlier Will dated 08.05.1984. In the subsequent Will, it was provided that, after his death, the entire property would devolve upon his wife, Smt. Raji Devi, without any right to sell or otherwise dispose of the said property, although she could utilise the same for her maintenance. It was further provided that, after the death of his wife, the property in question would devolve upon his daughter, Smt. Pushpa Devi, who would become the absolute owner thereof.

7. Thereafter, defendant No. 1, Smt. Pushpa Devi, executed a gift deed in favour of defendant No. 2, Smt. Neha Shukla, on 23.06.2014. The respondent thereafter instituted the present suit seeking a decree of permanent injunction. In the meantime, he also moved an application for temporary injunction with a prayer to restrain the defendants from evicting him from the disputed property. The said application was decided by the learned trial court by order dated 29.10.2015, whereby both the parties were directed to maintain status quo in respect of the disputed property.

8. Aggrieved by the order dated 29.10.2015, the present appeal has been preferred. It has been submitted on behalf of the appellants that the order directing both the parties to maintain status quo is unsustainable and contrary to the settled principles governing the grant of temporary injunction. Before granting a temporary injunction, the court is required to consider the existence of a prima facie case, the balance of convenience, and the likelihood of irreparable loss. It is submitted that the learned trial court failed to consider any of these factors and directly passed an order directing the parties to maintain status quo, without considering that the said order would cause irreparable loss and prejudice to the defendants, who claim to be the true owners of the disputed property on the basis of the subsequent Will executed by its owner on 19.12.2008.

9. It is further submitted that, by passing the impugned order, the learned trial court has disregarded the settled principles governing temporary injunctions and has effectively granted protection against the true owners of the property. The documents relied upon by the parties, namely, the two Wills and the gift deed, demonstrate, according to the appellants, that the respondent has no right or title to remain in possession of the disputed property. It is submitted that, prior to the execution of the gift deed, the respondent was residing in the said house only by virtue of being the son of defendant No. 1, Smt. Pushpa Devi. However, his conduct subsequently changed and he started misbehaving with her and other family members.

10. It is further submitted that the misbehaviour of the respondent compelled late Sri Ram Kishore Tiwari to cancel his earlier Will dated 08.05.1984. Therefore, the relief granted by the learned trial court in favour of the respondent would, according to the appellants, result in further misbehaviour and mistreatment towards the true owner of the property. In the aforesaid circumstances, it is submitted that the order passed by the learned trial court is liable to be set aside.

11. Learned counsel for the respondent, on the other hand, submitted that the learned trial court, by its order, has merely directed both the parties to maintain status quo. The respondent has been residing in the disputed house from the very beginning and continues to reside therein. Therefore, the appellants cannot seek a prohibitory temporary injunction against a party who is already in possession of the disputed property. It is, accordingly, submitted that the appeal, being devoid of merit, is liable to be dismissed.

12. Heard learned counsel for the parties and perused the impugned order passed by the learned trial court.

13. The learned trial court, in its impugned order, has observed that the defendants themselves have admitted in their pleadings that the respondent/plaintiff is residing in the disputed property. It is manifest from the aforesaid observation of the learned trial court that the possession of the respondent/plaintiff over the disputed house has been admitted by the appellants/defendants in their written statement.

14. It has further been observed that, although the defendants claimed to have got their names mutated in the municipal records in respect of the disputed house on the basis of the gift deed dated 23.06.2014, they were

unable to produce any documentary evidence in support thereof. The learned trial court further held that the validity of both the Wills as well as the gift deed is a matter to be adjudicated upon during the trial and, therefore, at this stage, no finding could be recorded with regard to their validity.

15. It was on the aforesaid basis that the learned trial court passed the impugned order directing the parties to maintain status quo in respect of the disputed property.

16. Having considered the findings recorded by the learned trial court, this Court is also of the view that the impugned order does not suffer from any infirmity warranting interference in the present appeal. Although the registered Will dated 19.12.2008 executed by late Sri Ram Kishore Tiwari in favour of appellant/defendant No. 1 and the gift deed executed by appellant/defendant No. 1 on 23.06.2014 in favour of appellant/defendant No. 2 prima facie support their claim with regard to the disputed property, the continuous habitation and possession of the respondent/plaintiff therein is also an admitted fact.

17. In view of the aforesaid circumstances, the learned trial court, in directing the parties to maintain status quo, has neither committed any illegality or irregularity nor acted perversely. The impugned order, therefore, does not call for any interference by this Court.

18. Accordingly, the appeal is dismissed.

September 25, 2026
Mukesh

(Anil Kumar-X,J.)