

17.01.2024
sayandeep
Sl. No. 13
Ct. No. 04

FMA 1116 of 2022

Abdul Kalam & anr.
Vs.
Md. Manik Ali & ors.

Mr. Sambhunath De
Mr. Barun Kumar Samanta
..... for the appellants
Mr. Gour Baran Sau
..... for the respondent Nos. 1, 4 and 5

By the impugned order No. 27 dated 29.06.2022, the Trial Court rejected the application by which an *ad interim* order of injunction was sought on the ground that since the persons against whom the injunction is sought, did not appear, the rule of equity, good *prima facie* case does not favour the plaintiffs/appellants to get the said ad interim order of injunction.

A suit for declaration that the bantannama is void and the entry made in the R.S. Record of Right on the basis thereof is also erroneous and the partition and separation of share is filed by the plaintiffs. In the said suit an application for injunction was taken out alleging that taking advantage of those erroneous entry in the Record of Right, the defendant Nos. 1, 2, 3, 6, 9,10 and 11 are creating an obstruction in the peaceful possession of the plaintiffs/appellants and also attempting to oust them from the possession and contemplating to transfer their share to a third party

and also changing the nature and character of the suit property by making an illegal construction thereupon.

The said application was pending since 2019 and a further application for *ad interim* order was taken out in the year 2022, which is disposed of by the impugned order alleging that taking advantage of the Bench being vacant, the aforesaid defendants along with defendant No. 25 are invading the rights of the plaintiffs.

It is no doubt true that the Court is not denuded power to pass an *ex parte ad interim* order of injunction but while doing so must record the reasons therefor. The aforesaid principles is derived from the provisions contained under Order XXXIX Rule 3 of the Code of Civil Procedure and, therefore, the Court while considering the prayer for *ad interim* order of injunction must follow the principles and/or the guidelines applicable in relation to passing of the temporary injunction.

Apart from the existence of the *prima facie* case, while granting the *ex parte ad interim* order of injunction, the Court will consider whether the balance of convenience and inconvenience lies in favour of such order and in absence thereof the plaintiff would suffer immense injury.

We are unable to accept the proposition as laid down in the impugned order that the moment the defendants against whom the *ad interim* order is prayed

for, has not appeared, the rule of equity and the good prima facie case does not warrant any order to be passed against them. Such notion is opposed to the provisions contained under Order XXXIX Rule 3 of the Code, which confers power upon the Court to pass an order in absence of the defendant, with the rider that while exercising such power, the Court should record the reasons.

The impugned order is bereft of any finding relating to a *prima facie* case, balance of convenience and inconvenience and irreparable loss and injury and, therefore, the necessary ingredients required for such purposes have not been followed.

We, therefore, set aside the impugned order and relegate the matter to the Trial Court to reconsider an application for *ad interim* order of injunction within a fortnight from the date of the communication of the instant order in accordance with law.

The appeal is, accordingly, disposed of.

In view of the disposal of the appeal, the connected application is also disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)