

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CM(M) No. 112/2023
CM No. 3867/2023

Rinkash Singh (age-36 years)Petitioner
S/o Rattan Singh
R/o H. No. 1 Main Road Chinore, Jammu.

Through :- Mr. Rajinder Jamwal, Advocate.

V/s

Charan Dass (Age-65 years)Respondent(s)
S/o Garib Dass
R/o Upper Village Chinore Near Govt.
School, Jammu.

Through :-

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE
JUDGMENT

(ORAL)

1. The instant petition has been filed under Article 227 of the Constitution of India by the petitioner while questioning order dated 07.06.2023 passed by the court of Additional District Judge, Jammu (for short 'Appellate Court') in Miscellaneous Appeal titled **“Charan Dass vs. Rinkash Singh and anr”**.
2. The background facts emerging from the record would reveal that the plaintiff/petitioner herein filed a civil suit in respect of one kanal of land (60'x 80') covered under survey no. 24 min situated at Chinore Jammu against the respondent herein and one Komal Singh Jamwal on the premise that the said land being ancestral land devolved upon

- him and that the said land had been secured by concrete brick wall with small iron gate by the petitioner in order to avoid any encroachment and that the defendant/respondent herein without any right started encroaching upon the said land which came to be objected by the plaintiff/petitioner, yet the defendant/respondent continued with the encroachment and even started dumping construction material on the road side to raise construction over the said land thus, necessitating the filing of the suit.
3. The trial court after summoning the defendants therein in the said suit and upon filing of written statement and objections to the suit and application for interim relief by them, disposed of the application for interim relief in terms of order dated 10.01.2023 directing the parties to maintain status quo with respect to the possession of the suit land without drawing a satisfaction qua the existence of the principles governing the grant of an injunction.
4. Aggrieved of the order of the trial court, the defendant 1/respondent herein preferred an appeal before the appellate court while impleading the petitioner herein as respondent 1 in the said appeal.
5. The appellate court, in terms of order dated 07.06.2023 while disposing of the said appeal, reversed the order passed by the trial court dated 10.01.2023 holding that the plaintiff/petitioner herein had no prima facie case in his favour.
- Heard learned counsel for the parties and perused the record.**
6. Perusal of the record would reveal that both the trial court as well as the appellate court while deciding the application for interim relief

- and the appeal respectively have overlooked the basic fundamental principles governing and regulating the grant of injunction envisaged under Order 39 of the Code of Civil Procedure and the matter seemingly has not received appropriate consideration by both the courts below as on the one hand, while the trial court has overlooked the principles governing and regulating the injunction, the appellate court has too faulted in this regard besides having literally held a mini trial in the matter having expressed opinions about the merits of the case while considering a matter relating to the grant of injunction.
7. Law is settled that an interim relief is granted in the aid of and as an ancillary to the main relief available to a party on final determination of his rights in the suit and as such power to grant injunction is extraordinary in nature and it has to be exercised cautiously and not as a matter of right or course as the grant of injunction/interim relief is in the discretion of the Court.

- The Apex Court in case titled as **Dalpat Kumar and another vs. Prahlad Singh and ors** reported in **1992(1) SCC 719** has held that the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction.
8. The Apex Court further in case titled as “**Agriculture Produce Market Committee-Gondal and ors vs. Girdharibhai Rambhai Chhaniyara and ors**” reported in **1997(5) SCC 468** has held that a

- temporary injunction can only be granted where the applicant seeking the relief shows concluded right capable of being enforced and if the right is still at the stage of embryo, no injunction can be granted.
9. Having regard to what is observed and considered hereinabove, the matter is remanded back to the trial court for revisiting and reconsidering the application for interim relief afresh.
10. Accordingly, the petition is **disposed of** with a direction to the trial court being 2nd Additional Munsiff, Jammu to reconsider and revisit the application for interim relief accompanying the suit filed by the petitioner herein and decide the same in accordance with law after hearing the parties and uninfluenced by any observation made by this court on the merits of the case and shall make an endeavour to dispose of the application expeditiously preferably within a period of four weeks from today. Parties shall appear before the trial court on 12.02.2024. Till the application is decided by the trial court as directed above, the order of status quo passed by the trial court vide order dated 10.01.2023 shall remain in operation.
11. It is significant to note here that in view of aforesaid direction, the order dated 07.06.2023 passed by the appellate court which is under challenge in the present petition shall be deemed to have been set aside and appeal filed by the respondent herein dismissed.

(JAVED IQBAL WANI)
JUDGE

JAMMU
02.02.2024
Naresh/Secy.



