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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 01.12.2025***

+ **FAO 338/2025**

MATA SHANTI DEVI MANDIR TRUSTAppellant

Through: Mr. Vibhor Gupta, Mr. Akshay
Dalal, and Ms. Ritu Bhardwaj,
Advocates

Versus

SEEMA GUPTA

.....Respondent

Through: Mr. Sanjay Gupta, Advocate

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT (ORAL)

CHANDRASEKHARAN SUDHA, J.

CM APPL 75436/2025 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

FAO 338/2025

1. This appeal is against the order dated 24.11.2025, by which the application under Order XXXIX Rule 1 of the Civil Procedure Code, 1908 (the CPC), filed by the appellant/plaintiff



before the DJ-04/North-West Rohini Courts, Delhi, in CS.DJ. 906/2025 was dismissed.

2. The appellant/plaintiff filed a suit against the respondent/defendant for declaration, cancellation and injunction. As per the plaint, the schedule property is an established Ashram, and a temple has been operating in the same for more than half a decade. It is asserted to be a public charitable and religious trust that requires to be preserved. The respondent/defendant was engaged in a strictly fiduciary capacity as a caretaker and has no authority to alienate, transfer or claim ownership of the subject property. However, it is seen that unauthorized constructions and demolitions are taking place by the respondent/defendant in the plaint schedule property, which needs to be restrained by an order of interim injunction. Hence, the appellant/plaintiff moved the application under Order XXXIX Rule 1 of the CPC for restraining the respondent and her agents, or anyone acting on their behalf, from commencing, continuing or completing any construction,



demolition, alteration or addition in any manner in the plaintiff schedule property.

3. The trial court passed the following order :-

“After going through the averments mentioned in the plaint as well as judgment filed on behalf of plaintiff, court is of the view that no ground for ex parte interim injunction is made out as in the view of court no exceptional circumstances is reflected in the plaint which could justify the grant of ex parte injunction. Moreover, court is also view that without hearing the opposite party ex parte injunction could not be granted except on exceptional circumstances. However, as above mentioned, court has carefully gone through the plaint and judgment cited by Counsel for plaintiff but averments mentioned in the application does not make out the case of exceptional ground for grant of ex parte injunction. Therefore, prayer of ex parte interim injunction stands dismissed.”

4. When the matter came up before this Court, Advocate Mr. Sanjay Gupta, accepted notice for the respondent/defendant.

5. The learned counsel for the appellant/plaintiff submitted that the materials on record, including the photographs produced, clearly show that the construction and demolition activities are going on in the plaintiff schedule property and, therefore, if an order of *status quo* is not passed, the suit would become infructuous,



causing considerable prejudice to the appellant/plaintiff.

6. The request for passing an order of *status quo* is strenuously opposed by the learned counsel for the respondent/defendant, who submitted that the suit itself is not maintainable; that the appellant/plaintiff has no right, title or interest in the property and that the appellant/plaintiff is not even in possession of the scheduled property.

7. However, it is submitted that the respondent/defendant is ready to give an undertaking that she would not create any third-party interest in the property till the next date of hearing. But, the respondent/defendant was not amenable to an order of *status quo*.

The statement filed by the respondent/defendant reads thus:-

“Without prejudice to my contention that the suit filed by the Plaintiff is not maintainable and the Plaintiff has no right, title or interest in the suit property and that the Plaintiff is not even in possession of the suit property, I agree not to create any third party rights/interest in the suit property bearing house no20/4, block A, Rana Pratap Bagh North Delhi, (as prayed by Petitioner before trial on page 38) till the next date of hearing. The second prayer on page 38 on use of shop has become infructuous as the said shop already stand demolished.



The request this Hon'ble Court to direct the Trial Court be to decide the application in a time bound manner and fix any date in this month.”

8. The impugned order does not give reasons as to why the Court was not inclined to grant an order of interim injunction. It appears that the trial court was not inclined to grant an *ex-parte* injunction without hearing the respondent/defendant. Therefore, the trial court has not gone into the merits of the case. The question whether the suit is maintainable or whether the appellant/plaintiff is entitled to any relief, are matters that need to be decided first by the trial court, and only thereafter this Court needs to look into the same. The subject matter of the *lis* is to be preserved till the trial court is able to pass an order on merits in the application under Order XXXIX Rule 1 CPC, and hence, the parties are to be directed to maintain *status quo* till then.

9. The parties are directed to appear before the trial court on 09.12.2025. The trial court shall dispose of the application under



Order XXXIX Rule 1 CPC as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order. Till the trial court is able to dispose of the application, the parties shall maintain *status quo*. No constructions/demolitions shall be made, and no third-party interest shall also be created in the plaint schedule property. It is made clear that, by passing an order of *status quo*, this Court has not gone into the question as to whether the appellant/plaintiff has made out a *prima facie* case or whether the suit and the application under Order XXXIX Rule 1 CPC are maintainable or not. Those are matters that are required to be decided by the trial court.

10. The appeal is, accordingly, disposed of in the aforesaid terms. No order as to costs.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 1, 2025

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