

Law on  
**INTERIM INJUNCTIONS**

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1. **“Injunction” meaning of?:** ‘Injunction’ means- an order of court to do or not to do something.
  - 1.1 **Laws relating to injunctions are as under:**
    - (i) Sections 36, 37, 38, 39, 40, 41, 42 of the Specific Relief Act, 1963
    - (ii) Section 94(c) CPC
    - (iii) Order 39, rules 1, 2, 3, 4 CPC
    - (iv) Section 151 CPC
    - (v) Order 43, rule 1(r) CPC (Misc. Appeal)
  - 1.2 **Sources of power of court to grant interim injunction:** There are two sources of powers of court to grant interim injunction:
    - (i) Section 94(c) CPC
    - (ii) Section 151 CPC
2. **Difference between sections, orders and rules of CPC :** CPC has been divided into sections and rules under various orders. Sections create jurisdiction and power of the court while rules indicate the manner in which the said jurisdiction and power is to be exercised. Power to grant temporary injunction u/s 94(c) CPC can be exercised only if the circumstances under Order 39, Rules 1 & 2 CPC are existing. See : Vareed Jacob vs. Sosamma Geevarghese, (2004) 6 SCC 378
3. **Object of granting interim injunction:** The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. See: Zenit Mataplast P. Ltd. vs. State of Maharashtra, 2009(6) Supreme 584

**3.1 Nature of interim injunction is equitable:** A finding on ‘prima facie case’ would be a finding of fact. However, while arriving at such finding of fact, the court not only must arrive at a conclusion that a case of trial has been made out but also that other factors requisite for grant of injunction exist. Under Section 94 CPC r/w Order 39 of the CPC, jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he is seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction u/o 39, rules 1 or 2 of the CPC but also in respect of the party approaching the court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings. See :

- (i) Neon Laboratories Ltd. vs. Medical Technologies Ltd. (2016) 2 SCC 672(Para 6)
- (ii) K.R. Jadeja vs. Maruti Corporation, 2009 (107) RD 265 (SC)
- (iii) M. Gurudas vs. Rasaranjan, 2006 (65) ALR 331 (SC)
- (iv) Transmission Corp. of A.P. Ltd. vs. Lanco Kondapalli Power (Pvt.) Ltd., (2006) 1 SCC 540
- (v) M/s. Gujarat Bottling Co. Ltd. vs. Coca Cola Company, AIR 1995 SC 2372
- (vi) U.P. Avas Evam Vikash Parishad vs. N.V. Rajgopalan Acharya, AIR 1989 All 125 (D.B.)

**3.2 Equity follows the law/statute:** Equity follows the law/statute. Equity can supplement but not supplant the law/statute. See: Celir LLP Vs. Bafna Motors Mumbai Private Limited, (2024) 2 SCC 1.

**4. Kinds of injunctions:** Injunctions are of following two kinds:

- (i) Prohibitory injunction (Sections 36, 37, 38, 41 of the S.R. Act, 1963)
- (ii) Mandatory injunction (Section 39 of the S.R. Act, 1963)

**4.1 Kinds of injunctions stage-wise:** As per Section 37 of the Specific Relief Act, 1963, according to their stages, injunctions are of following kinds:

- (a) Permanent prohibitory injunction: is passed at the end of the trial in the judgment when the suit is decreed.

- (aa) Temporary, interim or ad interim prohibitory injunction: is passed under Section 94(c) CPC read with Order 39, rules 1, 2, 3 CPC or under Section 151 CPC at any stage during the pendency of the suit but before judgment.
- (b) Permanent mandatory injunction: is passed only at the end of the trial in the judgment when the suit is decreed.
- (bb) Temporary, interim or ad interim mandatory injunction: is passed under Section 94(c) CPC read with Order 39, rules 1, 2, 3 CPC or under Section 151 CPC at any stage of the suit but before judgment.

**5. Pre-conditions for grant of injunctions:** Before grant of injunction, following pre-conditions must be fulfilled:

- (i) Prima facie case
- (ii) Irreparable loss
- (iii) Balance of convenience. See:  
Shyam Sel And Power Limited Vs Shyam Steel Industries Limited,  
( 2023) 1 SCC 634

**6.1 Injunction when not to be granted?:** Injunction will be refused under the following circumstances even when all the above three conditions are fulfilled:

- (1) when an equally efficacious or alternative remedy is available in law to the plaintiff for redressal of his grievances (Section 41(h) of the S.R.Act,1963)
- (2) when the loss to be caused to the plaintiff in the absence of injunction is ascertained or capable of being ascertained in terms of money and he can be compensated by way of money.(Clauses (b) and (c) to sub-section (3) of Section 38 of the S.R.Act,1963). For example: loss or damage to any movable property like crops, fruits, fish, animal, furniture or any similar thing but not to any immovable property like land, building or trees standing on land.
- (3) when plaintiff has concealed from court any material fact relating to the case (Section 41(i) of the S.R.Act,1963).
- (4) when plaintiff has tried to mislead the court by playing fraud on it (Section 41(i) of the S.R.Act,1963).
- (5) when plaintiff's own conduct is responsible for his grievance ((Section 41(i) of the S.R.Act,1963).
- (6) when plaintiff seeks to restrain operation of some law or against exercise of a power conferred on an officer or person by some law
- (7) when the suit itself is barred by some law
- (8) when the plaintiff seeks an injunction as an interim protection which he has not asked for as permanent injunction in the plaint

- (9) an ad interim or ex-parte injunction against statutory bodies, Government or government officers, educational institutions and local bodies is generally not granted without providing them opportunity of objection and hearing.
- (10) when plaintiff seeks injunction to restrain some infrastructure project or activity related to it. (Section 41(ha) of the S.R.Act,1963) w.e.f..1.10.2018.
- (11) an injunction is generally not granted against construction of public projects like road, drainage system, building for public office, bridge or similar other projects of public utility or importance.
- (12) a mandatory injunction as an interim protection whether ex-parte or temporary
- (13) an interim injunction which grants the final relief asked for in the plaint or finally decides the suit.
- (14) when grant of injunction is prohibited by some law.

**6.2. No injunction if the disputed property is not identifiable:** In view of the provisions of Order 7, rule 3 CPC and Order 20, rule 9 CPC, injunction cannot be granted if the disputed immovable property is not identifiable. See: Smt. Phoolmati Devi vs. ManikLal, 2005 (2) AWC 1823 (All) (LB).

**6.3. Prohibition of injunction under Order 39, rule (2), sub-rule (2), Proviso as inserted in Uttar Pradesh w.e.f. 01.01.1977:** Under the above amendment in Order 39 CPC, grant of temporary injunction has been prohibited in the State of Uttar Pradesh in the following matters:

- (a) Where no perpetual injunction could be granted in view of the provisions of Section 38 and Section 41 of the Specific Relief Act, 1963. or
- (b) to stay the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any employee of the Government, or
- (c) to stay, any disciplinary proceeding pending or intended, or the effect of any adverse entry, against any employee of the Government, or
- (d) omitted by U.P. Act No. 17 of 1991 w.e.f. 15.01.1991,
- (e) to restrain any election, or
- (f) to restrain, any auction intended to be made, or the effect of any auction made, by the Government unless adequate security is furnished, or
- (g) to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished, or

- (h) in any matter where a reference can be made to the Chancellor of University unless any enactment for the time being in force, and any order for injunction granted in contravention of these provisions shall be void.

**7. Principles Governing Grant of Interim Injunction:** Following conditions must be fulfilled before grant of ad interim injunction under Order 39, rules 1& 2 CPC :

- (1) Prima facie case
- (2) Balance of convenience
- (3) Irreparable loss
- (4) Bona fide conduct of the party seeking injunction. See:
  - (i) Makers Development Services Private Limited vs. M. Visvesvaraya Industrial Research and Development Center, (2012)1 SCC 735.
  - (ii) Moradabad Development Authority vs. Sai Sidhi Developers, AIR 2019 All 196.(Para 25).

**7.1 “Prima facie case” not to be confused with “prima facie title”:** Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Prima facie case is a substantial question raised bona fide which needs investigation and a decision on merits. Satisfaction of court that there is a prima facie case by itself is not sufficient to grant injunction. See: Dalpat Kumar vs. Prahlad Singh, AIR 1993 SC 276.

**7.2 Irreparable injury:** Prima facie case alone is not sufficient for grant of injunction. The court has to further satisfy that non-interference by court would result into irreparable injury to the party seeking relief and that there is no other remedy available to the party except the one to grant injunction and he needs protection from the consequences of the apprehended injury or dispossession. “Irreparable injury” however does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be material one, namely one that cannot be adequately compensated by way of damages or money. See: Dalpat Kumar vs. Prahlad Singh, AIR 1993 SC 276.

**7.3 Balance of convenience:** The third condition is that the balance of convenience must be in favour of grant of interim injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief of injury which is likely to be caused to the parties if the injunction is refused and compare it with that what is likely to be caused to the other side if the injunction is granted. If on

weighing competing possibilities or probabilities of likelihood of injury, the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. See:

- (i) Dalpat Kumar vs. Prahlad Singh, AIR 1993 SC 276
- (ii) U.P. Avas Evam Vikash Parishad vs. N.V. Rajgopalan Acharya, AIR 1989 All 125 (DB)
- (iii) Maria Margarida Sequeira Fernandes vs. Erasmo Jack De Sequeira, (2012) 5 SCC 370

**Note:** It was a suit for specific performance of agreement for sale which was decreed by the trial court and sale deed was also executed by the executing court. Thereafter a separate suit to set aside that decree was filed and during the pendency of the suit, the High Court granted temporary injunction which was set aside by the Supreme Court by holding that the High Court was not right in granting the temporary injunction.

- 7.4 Meaning of “prima facie case”:** The principles upon which injunction is granted is well settled. Party to the litigation who seeks an injunction must satisfy the court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie case is in his favour. However, at this juncture, it is made clear that prima facie case may not be confused in prima facie success but simply if there is a serious question to be tried, the test of prima facie case is satisfied and further court interference is necessary without which a right accrued in favour of the party concerned cannot be protected from species of injury which is known as irreparable injury and comparative mischief which is likely to be caused in the absence of the injunction will be greater and not compensable, thus the balance of convenience also tilts in his favour. Broadly, these principles apply where injunction is sought by the party. See: Smt. Shefali Roy vs. Hero Jaswant Dass, AIR 1992 All 254 (DB)
- 7.5 Party seeking interim injunction in property must show proprietary interest in subject matter of dispute :** Ordinarily, a party seeking interim injunction under Order 39, rules 1 & 2 CPC must have proprietary interest in the subject matter of dispute. See : Margaret Almeida vs. Bombay Catholic Co-operative Society Limited, (2013) 6 SCC 538.
- 7.6 Mere making out a prima facie case by party not enough for grant of temporary injunction:** Only making out a prima facie case by plaintiff is not sufficient for grant of injunction. It must be shown that the injury suffered by the plaintiff in case of refusal of temporary injunction would be irreparable. See:

- (i) Best Sellers Retail India Private Limited vs. Aditya Birla Nuvo Limited, AIR 2012 SC 2448.
- (ii) Moradabad Development Authority vs. Sai Sidhi Developers, AIR 2019 All 196.

**7.7 No interim injunction in the absence of prima facie case even if the other requirements are fulfilled:** Interim injunction u/o 39, rules 1 & 2 CPC cannot be granted when the party is unable to prove prima facie case in his favour even if such party makes out a case of balance of convenience and irreparable injury. See: Kashi Math Samsthan vs. Shrimad Sudhindra Thirtha Swamy, AIR 2010 SC 296.

**8. Ex-parte ad interim injunction---when to be granted?:** (Section 94 r/w Order 39, rule 3 CPC): Ex-parte injunction can be granted only under exceptional circumstances. The Supreme Court has enumerated following principles and factors which should weigh with the court for grant of ex-parte injunction:

- (1) whether irreparable or serious mischief will ensue to the plaintiff;
- (2) whether the refusal of ex-parte injunction would involve greater injustice than the grant of it would involve;
- (3) the court will also consider the time at which the plaintiff first had notice of the act complained of so that the making of improper order against a party in his absence is prevented;
- (4) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex-parte injunction;
- (5) the court would expect a party applying for ex-parte injunction to show utmost good faith in making the application;
- (6) even if granted, the ex-parte injunction would be for a limited period of time;
- (7) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court. See:

(i) Bombay Dyeing & Manufacturing Co. Ltd. vs. Bombay Environmental Action Group, (2005) 5 SCC 61

(ii) Morgan Stanley Mutual Fund vs. Kartickdas, (1994) 4 SCC 225

**8.1 Duty of judicial officers while granting ex-parte ad interim injunction order :** In order to grant or refuse injunction, the Judge must carefully examine the entire pleadings and documents with utmost care and seriousness. The safe and better course is to give a short notice on the injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an ex-parte ad interim

injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex-parte ad interim injunction. See: *Bombay Dyeing & Manufacturing Co. Ltd. vs. Bombay Environmental Action Group*, (2005) 5 SCC 61

- 9. Effect of non-compliance with the Proviso to Order 39, Rule 3 CPC:** Ex-parte injunction cannot be granted unless Rule 3 of order 39 CPC is complied with. It is of utmost importance to note that an ex-parte order of injunction is an exception, the general rule being that order be passed only after hearing both the parties. It is only in rare cases where the court finds that object of granting injunction would be defeated by the delay, the court can issue an injunction ex-parte but that too only after **recording reasons** therefor. See:
- (i) *Shiv Kumar Chaddha vs. Municipal Corpn. of Delhi*, (1993) 3 SCC 161
  - (ii) *Road Flying Carrier vs. The General Electric Company of India Ltd.*, AIR 1990 All 134 (D.B.)
- 9.1 Consequences of non-compliance of Order 39, rule 3 CPC:** If a party, in whose favour an order was passed ex-parte, fails to comply with the duties which he has to perform as required by the Proviso to Rule 3 of Order 39 CPC, he must take the risk. Non-compliance with such requisites on his part cannot be allowed to go without any consequence and to enable him to have only the advantage of it. The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party. See:
- (i) *A. Venkatasubbiah Naidu vs. S. Chellappan*, AIR 2000 SC 3032
  - (ii) *Road Flying Carrier vs. The General Electric Company of India Ltd.*, AIR 1990 All 134 (D.B.)
- 9.2 Consequences of non-compliance of Order 39, rule 3 CPC:** If the ex-parte ad interim injunction granted by court is subsequently confirmed after hearing both parties, the question of non-compliance by the plaintiff with the provisions of Proviso to Rule 3 of Order 39 CPC loses its significance. Otherwise for non-compliance with the aforesaid provisions, the court may proceed under Order 39, rule 4 CPC to discharge, vary or set aside the ex-parte ad interim injunction granted by it. See: *U.P. Pasi Jagriti Mandal, Lucknow vs. Devi Dayal Chauhan*, 1997 (1) JCLR 5 (All) (LB).
- 9.3 Consequences of non-disposal of injunction application on merits within 30 days from the date of grant of ex-parte ad-interim injunction:** (*Order*



*39, Rule 3-A CPC has been omitted in the State of U.P. vide Allahabad High Court's Notification No. 103/IV-h-360, dated 3.2.1981*): When an ex-parte temporary injunction is granted by a judicial officer u/o 39, rule 3 CPC but he fails to dispose of the temporary injunction application on merits within 30 days from the date of grant of ex-parte temporary injunction, the aggrieved party shall be entitled to right of appeal notwithstanding the pendency of the application for grant or ion of the temporary injunction, against the order remaining in force. The appellate court shall, then, be obliged to take note of the omission of the subordinate court in complying with the provisions of Order 39, Rule 3-A CPC. In appropriate cases, the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACR. Failure to decide the injunction application or to vacate the ex-parte temporary injunction shall, for the purpose of the appeal, be deemed to be the final order passed on the application for temporary injunction on the date of expiry of 30 days mentioned in Rule 3-A. See: A. Venkatasubbiah Naidu vs. S. Chellappan, AIR 2000 SC 3032

- 9.4 Temporary injunction or stay order to vacate automatically on expiry of six months:** Temporary injunction or stay order shall vacate automatically on expiry of six months unless the court extends it further by passing speaking order. See:Asian Resurfacing of Road Agency Vs CBI,AIR 2018 SC 2039

**Note:** Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench) has now been overruled by a Five-Judge Constitution Bench of the Hon'ble Supreme Court by its judgement dated 29.02.2024 passed in High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

- 9.5 No automatic expiration of interim stay order after six months:** Overruling its previous Three-Judge Bench judgement in Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299, a Five-Judge Constitution Bench of the Hon'ble Supreme Court has ruled that an interim stay order would not expire after expiration of six months from the date of passing of the stay order. See: High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207
- 10. Status quo: legality of such interim injunctions:** Issuing direction to maintain status quo in relation to the disputed property is a well-known

method and the usual order made during the pendency of a dispute for preserving the property and protecting the interest of the true owner till the adjudication is made. A change in the existing situation is fraught with the danger of prejudicing the rights of the true owner, yet to be determined as the maintenance of status quo during the pendency of the suit is necessary so that the disputed property can be handed over to its true owner found entitled to it after decision of the suit. See:

- (i) M. Ismail Faruqi vs. Union of India, AIR 1995 SC 605 (Five- Judge Constitution Bench)—Known as Ram Janma Bhumi and Babri Masjid dispute at Ayodhya.
- (ii) Julien Educational Trust vs. Sourendra Kumar Roy, (2010) 1SCC 379.

**10.1 Consent, waiver or acquiescence of parties cannot confer jurisdiction on court:** No amount of consent, waiver or acquiescence can confer jurisdiction on a court which it inherently lacks or where none exists. See: Vithalbhai (P) Ltd. vs. Union Bank of India, (2005) 4 SCC 315.

**10.2 Merits of the case not to be discussed when court has no jurisdiction:** It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. Kindly see: **Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083**

**11. Recording of reasons mandatory while granting or refusing injunction:** Recording of reasons for granting or refusing injunction is mandatory. See:  
(i) Rayat Shikshan Sanstha vs. Sneel Shiva Gaikwad, (2010)15 SCC 539.  
(ii) Moradabad Development Authority vs. Sai Sidhi Developers, AIR 2019 All 196.  
(iii) Shiv Kumar Chaddha vs. Municipal Corpn. of Delhi, (1993) 3 SCC 161  
(iv) Road Flying Carrier vs. The General Electric Company of India Ltd., AIR 1990 All 134 (D.B.)

**12. Merit not to be adjudicated at interim stage :** At the interim stage of proceedings, issues touching upon merits of the case cannot be adjudicated . See : Prasar Bharti Vs. Board of Control for Cricket in India, (2015) 6 SCC 614.

**12.1 Mini trial of suit not permissible u/o 39, rules 1 & 2 CPC :** Court should not proceed for mini- trial of the suit while granting or refusing an application under Order 39, rules 1 & 2 CPC. See : Amir Alam Khan vs.

Lucknow Development Authority, Lucknow, 2011 (29) LCD 1695 (All) (DB)(LB)

- 13. Affidavit sufficient for grant of temporary injunction:** For temporary injunctions under Order 39, rule 1 & 2 CPC, plaintiff can prove the three ingredients, i.e. (i) Prima facie case, (ii) Balance of convenience and (iii) irreparable injury on affidavits. The power given to courts to act on affidavits is not subject to the provisions of Order 19, rules 1 & 2 CPC. See: Satya Prakash vs. Ist ADJ, Etawah, AIR 2002 All 198.
- 14. Interim injunction beyond the scope and parties to the suit cannot be granted:** An interim or interlocutory order ought not to be made beyond the scope of the suit nor against the parties who are not before the court. See:  
(i) Ritona Consultancy Pvt. Ltd. vs. Lohia Jute Press, (2001) 3 SCC 68  
(ii) Sree Jain Swetambar Terapanthi vs. Phundan Singh, (1999) 2 SCC 377
- 14.1 Relief not claimed in plaint not to be granted:** A relief larger than the one claimed by plaintiff in the suit cannot be granted by court. It is not open to the court to grant a relief to the plaintiff on a case for which there is no basis in the pleadings. See:  
(i). M. Siddiq (Ram Janmabhumi Temple Vs. Suresh Das, (2020) 1 SCC 1 at pages 737 & 738 (Para 1228) ( Five-Judge Bench).  
(ii) Meena Chaudhary Vs. Commissioner of Delhi Police, (2015) 2 SCC 156.  
(iii) Rajendra Tewary vs. Basudeo Prasad, 2002 (46) ALR 222 (SC)  
(iv). Om Prakash Vs. Ram Kumar, (1991) 1 SCC 441 (Para 4).  
(v). Srinivas Ram Kumar Vs. Mahabir Prasad, AIR 1951 SC 177 (Three-Judge Bench)  
(vi). Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 255 ( Five-Judge Bench) ( Para 14).
- 14.2 Temporary injunction can be granted only in terms of the permanent injunction sought in the plaint :** An interim relief ( interim injunction) can be granted only in aid of and as ancillary to the main relief. If the final relief cannot be granted in the terms sought for, a temporary relief of the same nature cannot be granted. See: Cotton Corporation of India Ltd. Vs. United Industrial Bank Ltd., AIR 1983 SC 1272
- 14.3 Temporary injunction not to be granted beyond the terms of the prayer for permanent injunction asked for in the plaint:** Temporary injunction

u/o 39, rules 1, 2, 3 CPC can be granted in the term of the prayer for permanent injunction in the suit and not on different terms. If the plaintiff did not pray for permanent injunction in the plaint, he cannot seek temporary injunction on the same terms by means of application. See :

- (i) Meena Chaudhary Vs. Commissioner of Delhi Police, (2015) 2 SCC 156.
- (ii) V.D. Tripathi vs. Vijai Shanker Dwivedi, AIR 1976 All 97

**14.4 Interim injunction of a different kind than the one sought in the plaint cannot be granted:** When the suit is for permanent injunction of one kind, interim injunction of a different kind cannot be granted. See: Zandaram vs. Prahlad Rao, AIR 1963 Gujarat 160.

**14.5 Interim relief not to be granted if final relief in the same terms cannot be granted:** (*Sections 38 & 41 of the S.R. Act, 1963 r/w. Or. 39, rule 2, sub-rule 2, U.P. Amendment, proviso, clause (a) CPC*): If the relief of permanent injunction claimed in the plaint is barred by Sec. 38 or 41 of the Specific Relief Act, 1963, no temporary injunction of the same nature or term can be granted by the court in view of the bar of law contained under Or. 39, rule 2, sub-rule 2, U.P. Amendment, proviso, clause (a) CPC. Even by exercising inherent power of the court u/s 151 CPC, no interim relief or interim injunction can be granted by court if the final relief in the same terms cannot be granted. See: Dilip Kumar vs. Spl. Judge, Barabanki, 1992 (10) LCD 13 (All—L.B.)

**14.6. Relief claimed in plaint but not discussed in judgment and not granted in writing must be deemed to have been declined:** Relief claimed in plaint but not discussed in judgment and not granted in writing must be deemed to have been declined. If a decree is silent as regards any relief claimed by the plaintiff in the plaint, Explanation V to Section 11 CPC declares that such relief must be treated as refused. See: **Yashwant Sinha Vs. CBI, (2020) 2 SCC 338( Three-Judge Bench).**

**15. Obtaining injunction by playing fraud or misleading the court** (*Section 41 (i), S.R. Act, 1963 r/w Order 39, rule 2, sub-rule 2, U.P. Amendment, Proviso, Clause "a"*): Equitable conduct of the party is must for temporary injunction: Under Order 39 of the CPC, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair

or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction u/o 39, rules 1 or 2 of the CPC, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings .A person who had kept quiet for a long time and allowed another to deal with the property exclusively, ordinarily would not be entitled to an order of injunction. See:

- (i) Mandali Ranganna vs. T. Ramchandra, AIR 2008 SC 2291.
- (ii) M/s. Gujarat Bottling Co. Ltd. vs. Coca Cola Company, AIR 1995 SC 2372

**15.1 Falsehoods etc.:** In the case of falsehood and fraud by a party to a litigation, Court has inherent power to protect itself and further stop the perpetuation of fraud. Nicety of law and the Court's reception to it are for those who come clean. Such parties may seek redressal of their actionable claims and the academics of legal or statutory interpretations. Parties harbouring falsehoods and deceit are to be shown the door out of Court. This is for the protection of the Court. Otherwise, the people will be losing faith in public justice system when in the case of fraud the Courts will listen to judicial polemics. Thus, notwithstanding anything contained in Order 39, rule 2 of the CPC as applicable in U.P., let no person indulge in falsehood and fraud and then say that a Court will not protect itself under its inherent powers by passing such orders as may be deemed necessary. See: Naresh Chandra vs. District Magistrate, Nainital, AIR 1990 All 188

**15.2 Conduct of Plaintiff and Temporary Injunction:** Equitable relief of Injunction cannot be granted to plaintiff guilty of inequitable conduct. **Note:** In this case, the plaintiff had abused process of law by instituting different cases at different fora to evade his eviction under orders from lower court to High Court and had ultimately filed an injunction suit against his eviction just to frustrate the eviction decree. See: Kauchusthabam Satyanarayana vs. Namuduri Atchutramayya, 2005 (2) AWC 1239 (SC).

**15.3 In case of fraud, concealment of material facts or misrepresentation etc., temporary injunction is to be refused even if all the three ingredients are fulfilled:** No interim injunction can be granted in favour a party concealing from court some material facts, playing fraud and misrepresentations etc. even if all the three legally required conditions for grant of interim injunctions (prima facie case, balance of convenience & irreparable loss) are fulfilled and if already granted, the same should be vacated by the court. See:

- (i) The National Textile Corporation U.P. Ltd. vs. Swadeshi Cotton Mills Ltd., 1987 ALJ 1266 (All) (D.B.)
- (ii) Shivnath vs. District Judge, Nainital, 1991 AWC 30 (All)
- (iii) Naresh Chandra vs. D.M., Nainital, AIR 1990 (All) 18

**15.4. Complaint u/s 195 (1) (a) (i) CrPC in the event of fraud, concealment of fact, misrepresentation etc:** Furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is an offence punishable u/s 182 IPC. Cognizance of such offence can be taken by court once a proper complaint as per Section 195 (1) (a) (i) CrPC is filed. Any person who makes attempt to deceive the court interferes with the administration of justice and can be held guilty of contempt of court. Anyone who takes recourse to fraud deflects the course of judicial proceedings or if anything done with oblique motive or any publication with intent to deceive the court or made with intention to defraud, same is contempt as it would interfere with the administration of justice. Concealment of material facts is jugglery, manipulation, manoeuvring or misrepresentation, which has no place in prerogative jurisdiction. If the applicant does not disclose all material facts fairly and truly but states them in distorted manner and misleads the court, then court has inherent power to protect itself and prevent abuse of its process and refuse further examination of case on merits. If the court does not reject the petition on that ground, it is failing in its duty. Such application requires to be dealt with as contempt of court for abusing process of court. See: ABCD Vs. Union of India, (2020) 2 SCC 52.

**15.5. Misleading the court:** Where the plaintiff in the suit for injunction against defendants restraining them from interfering with the construction of wall in a passage, obtained an ex-parte interim injunction wrongly by misleading the Court in as much as the sale deed on the basis of which the plaintiff claimed ownership of the suit property was not placed before the Court and the defendants were not heard before passing the order of interim injunction, and after obtaining the order the plaintiff completed the construction of the wall and then applied for withdrawal of the suit and prayed for dismissal of injunction application as not pressed, the order passed by Court u/s 151 CPC for demolition of wall would be justified even if Section 144 CPC is not applicable, Sec. 151 CPC is there to undo the wrong done by the Court on being satisfied that the order was passed on being misled by the party. See: Rakesh Singhal vs. Vth ADJ, Bulandshhar, AIR 1990 All 12

**15.6. Delayed request for interim injunction:** It will be inequitable conduct on the part of the party who seeks the relief of interim injunction after much delay and the grant of the interim injunction would not be proper. Grant of

injunction is an equitable relief. A person who had kept quiet for a long time and allowed an other person to deal with the property exclusively, ordinarily would not be entitled to an order of injunction. See:

- (i) K.R. Jadeja vs. Maruti Corporation, 2009 (107) RD 265 (SC)
- (ii) Sheoraj vs M/s Accord Infrastructure Pvt. Ltd., 2011 (2) ALJ 501(All)(DB)

**16. Power of court to grant injunction u/s 151 CPC:** Even if in a given case, circumstances do not fall within the ambit of Order 39 CPC, the courts have inherent jurisdiction to issue temporary injunction u/s 151 CPC if the court is of the opinion that interest of justice requires issue of such interim injunction. Even otherwise also, it is settled law that u/s 151 CPC, the court has got inherent power to protect the rights of the parties pending the suit. See:

- (i) Vareed Jacob vs. Sosamma Geevarghese, (2004) 6 SCC 378
- (ii) State of Maharashtra vs. Admane Anita Moti, AIR 1995 SC 350
- (iii) Shiv Ram Singh vs. Smt. Mangara, 1988 ALJ 1516 (All)
- (iv) Ram Chand & Sons Sugar Mills vs. Kanhyalal Bhargava, AIR 1966 SC 1899
- (v) Manohar Lal Chopra vs. Seth Hira Lal, AIR 1962 SC 527
- (vi) Rajnibai vs. Kamla Devi, AIR 1996 SC 1946.

**16.1 Power of court to grant interim injunction u/s 151 CPC:** Once the legislature prescribes the cases in which an order of temporary injunction is to be granted and the cases in which such an injunction cannot be granted, the Court should respect the legislative intent as reflected by the statutory provisions. The legislative intent may be either express or may be clear by necessary implication. As long as the intention of the legislature could be gathered from the provisions and it is clear, inherent power of Section 151 CPC should not be exercised to nullify or stultify such a provision. Grant of temporary injunction by court in exercise of its inherent powers u/s 151 CPC is permissible in cases which do not fall under Order 39, rule 1 CPC. See: Smt. Shakunthamma & Others Vs. Smt. Kanthamma & Others, AIR 2015 Karnataka 13 (Full Bench).

**16.2 Power of court to grant interim injunction u/s 151 CPC:** As regards the exercise of inherent powers of the court u/s 151 CPC for purposes of granting interim injunction or any other relief, the Supreme Court has, in the cases noted below, ruled as under:

- (i) Inherent powers of court u/s 151 CPC are not to be used for the benefit of a party or litigant who has remedy under CPC similar in the position vis-à-vis other statute.

- (iii) Object of inherent powers u/s 151 CPC is to supplement and not to replace the remedies provided for in the CPC. Section 151 CPC will not be available when there is alternative remedy.
  - (iv) Section 151 CPC cannot be invoked when there is express provision in CPC under which relief can be claimed by the aggrieved party.
  - (v) Inherent powers of court u/s 151 CPC are in addition to the powers specifically conferred on the court.
  - (vi) Court has no power to do that which is prohibited by law or the CPC. Court cannot use power u/s 151 CPC where the remedy or procedure on a particular aspect is provided in the CPC.
- (1).K.K. Velusami Vs N. Palanisami (2011) 11 SCC 275  
 (2). State of U.P. vs. Roshan Singh, 2008 (71) ALR 1 (SC)  
 (3).Padam Sen Vs State of UP, (1961 ) 1SCR 884 (Para 8)

**16.3 Distinction between power of court to grant injunction u/s 94 CPC r/w Order 39, rules 1 & 2 CPC and u/s 151 CPC:** CPC has been divided into sections and rules under various orders. Sections create jurisdiction of the court while rules indicate manner in which jurisdiction is to be exercised. Power to grant injunction u/s 94 CPC can be exercised only if the circumstances under Order 39, rules 1 & 2 CPC are existing. Even if in a given case, circumstances do not fall within the ambit of Order 39 CPC, the courts have inherent jurisdiction to issue temporary injunction u/s. 151 CPC if the court is of the opinion that interest of justice requires issue of such interim injunction. See: Vareed Jacob vs. Sosamma Geevarghese, (2004) 6 SCC 378

**16.4 Court cannot grant interim injunction u/s 151 CPC:** A Division Bench of the Allahabad High Court has held that powers u/s 151 CPC cannot be invoked to deal with an application for which there is a statutory provision and temporary injunction in that event can be granted under Order 39, rules 1 & 2 CPC and not u/s 151 CPC. See: Satya Prakash Tiwari vs. Civil Judge (J.D.), Etawah, 2006 (62) ALR 431 (All) (DB)

**16.5 Grant of temporary injunction u/s 151 CPC after rejection of application for interim injunction under Order 39, rules 1 & 2 CPC:** Temporary injunction cannot be granted under Order 39, rules 1 & 2 CPC if the imperative THREE conditions (1. prima facie case, 2. irreparable injury and 3. balance of convenience) or any of them is missing. But even after rejection of the application under Order 39, rules 1 & 2 CPC, plaintiff can move fresh application for temporary injunction u/s 151 CPC and the court can grant temporary injunction u/s 151 CPC in the interest of justice if it is found to be imperative in the interest of justice, even if the three ingredients or any of them as required under Order 39, rules 1 & 2 CPC are missing. See:



- (i) Vareed Jacob vs. Sosamma Geevarghese, (2004) 6 SCC 378 (Three-Judge Bench)
- (ii) Satya Prakash vs. First Additional District Judge, Etah, AIR 2002 Allahabad 198.

**17. Injunction order of civil court binding over order of executive magistrate passed u/s 145 CrPC:** Where the plaintiff was not allowed to participate in the proceedings before the executive magistrate u/s 145 CrPC and the civil court had granted injunction, interlocutory or final, in favour of the plaintiff to protect her possession over the property, it has been held by the Supreme Court that the order of the executive magistrate u/s 145 CrPC was not binding on the plaintiff and the grant of injunction by the civil court in favour of the plaintiff was proper. See: Shanti Kumar Panda vs. Shakuntala Devi, AIR 2004 SC 115.

**17.1 Writ petition under Article 226 not to be entertained when alternative remedy by way of civil suit or proceeding u/s 145 CrPC is available:** In the case noted below, a petition under Article 226 of the Constitution of India was filed before the High Court seeking relief of possession over the disputed flat. The Supreme Court held that remedy to the petitioner was available before the civil court in the form of a civil suit or before the criminal court u/s 145 CrPC and the extraordinary jurisdiction of High Court under Article 226 of the Constitution could not have been invoked by the petitioner. See: Roshina T. Vs. Abdul Azeez K.T., AIR 2019 SC 659.

**18. Temporary injunction cannot be passed against a third party or stranger or a non-party to the suit:** It is well settled principle of law that either temporary or permanent injunction can be granted only against the parties to a suit. Interim injunction order under Order 39, rules 1 & 2 CPC cannot be passed against non-party or third party or stranger. Further the consent order passed in terms of Order 39 CPC is only binding as against parties to the suit. See : West Bengal Housing Board Vs. Pramila Sanfui, (2016) 1 SCC 743 (Three-Judge Bench).

**18.1 Effect of non-impleadment of third party likely to be adversely affected by temporary injunction:** If a third party whose interest is to be adversely affected by the grant of injunction is not impleaded as party to suit or in the application for interim injunction, the application for interim injunction would not be maintainable and no injunction can be granted by court in the event of such non-impleadment. See: Mashkooor Hasan Khan Vs. Zila Parishad, Muzaffar Nagar, 1977 AWC 640 (All) (DB)

- 18.2 Execution of eviction decree & injunction suit by third party:** Separate injunction suit by third party claiming independent rights in decretal property is not maintainable in view of the bar contained u/s 47 CPC and Order 21, Rule 97 to 101 CPC. Such rights of third party can be decided in the case of execution of eviction decree itself and interim injunction cannot be granted. See:
- (i) Raghunath Prasad vs. Jang Jeet Singh, AIR 2008 (NOC) 49 (All)
  - (ii) 2003 AIR SCW 6458
  - (iii) Dhurandhar Prasad Singh vs. Jai Prakash University, AIR 2001 SC 2552
  - (iv) Silverline Forum Pvt. Ltd. vs. Rajiv Trust, AIR 1998 SC 1754
- 19. Interim injunction in representative suit :** Where interim relief in the form of interim injunction under Order 39, rule 1 & 2 CPC is likely to affect large number of persons but the suit was not filed in representative capacity, it has been held by the Supreme Court that there was need for plaintiffs to at least constitute simple majority of affected persons. See : Margaret Almeida Vs. Bombay Catholic Co-operative Society Limited, (2013) 6 SCC 538
- 19.1 Pendente lite transfers not to affect the rights of parties specially of plaintiff:** During pendency of the litigation, some more transactions took place in relation to the house in suit. The Supreme Court held that such transactions were directly hit by the principle of *lis pendens* as contemplated by Section 52 of the Transfer of Property Act and, therefore, the same were of no consequence so far as the litigation between the parties to the suit was concerned. In other words, these transactions were not binding on the parties to the *lis* much less on the plaintiff. Such parties would be, therefore, at liberty to now work out their inter se rights in accordance with law as a fall out of the judgment of the Supreme Court. See: Nadiminti Suryanarayan Murthy (Dead) through Legal Representatives Vs. Kothurthi Krishna Bhaskara Rao & Others, (2017) 9 SCC 622 (para 32).
- 20. No injunction or stay order to be granted against public projects or schemes etc of the Government regarding:**
- (i) Public Policy
  - (ii) Economic Policy
  - (iii) Public schemes
  - (iv) Public Projects
  - (v) Electricity Sub-station on Private Land
  - (vi) No ex-parte relief by way of injunction or stay especially with respect to public projects, public schemes or economic policies or schemes of Govt.

should be granted unless there is likelihood of irreparable damage. See: BALCO employees Union vs. Union of India, AIR 2002 SC 350

- 20.1. Infrastructure projects not to be restrained:** As per **sub-section (ha) of Section 41** of the Specific Relief Act, 1963 inserted w.e.f. **01.10.2018**, an injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.
- 20.2. No interim injunction even when a public Electricity Sub-station being constructed on private land:** In the present case, the plaintiffs had claimed temporary injunction to restrain the Electricity Board from interfering with the possession of the plaintiffs over the land in suit. In earlier round of litigation, the predecessor in title of the plaintiffs had failed to establish her title which had attained finality. The plaintiffs had failed to prima-facie establish possession over the suit land. The Electricity Sub-station was fully constructed on the suit property to provide electricity to the population of one lakh. Balance of convenience was in favour of the defendant Electricity Board. The plaintiffs were entitled to compensation u/s 67(3) of the Electricity Act, 2003 in the event they proved their title and possession. No hardship or prejudice was likely to be caused to the plaintiffs. The Supreme Court held that the plaintiffs were not entitled to temporary injunction under Order 39, Rules 1 & 2 CPC. See: State of Jharkhand Vs. Surendra Kumar Srivastava, AIR 2019 SC 231.
- 20.3. Injunction to restrain construction of commercial complex held improper:** Where construction of a commercial complex by the housing board under self-financing scheme was restrained by the court by an interim injunction, the Supreme Court held the grant of injunction improper and observed thus:” Time has come when the courts should be slow in interfering at interim stage with schemes which are based on costing. India is having cost-push economy. In a self-financing scheme based on costing, an interim injunction has a cascading effect. Failure on the part of even one contributory in contributing the amount to the cost results in total failure of the project. The developer, like the housing board, makes an initial investment by borrowing funds from the market. Therefore, an interim injunction at the initial stage of the project would result in the total collapse of the entire project.” See: M.P. Housing Board vs. Anil Kumar Khiwani, AIR 2005 SC 1863.

**21. Interim Mandatory Injunction:** (*Section 39, Specific Relief Act, 1963 r/w Section 94(c) and Order 39, rules 1 & 2 CPC*): An interim mandatory injunction which virtually grants final relief asked for in the plaint cannot be granted at the interim stage. See:

- (i) State of U.P. vs. Ram Sukhi Debi, 2005 (25) AIC 328 (SC)
- (ii) Bombay Dyeing & Manufacturing Co. Ltd. vs. Bombay Environmental Action Group, (2005) 5 SCC 61
- (iii) Dattaraj vs. State of Maharashtra, (2005) 1 SCC 590
- (iv) B. Singh vs. Union of India, (2004) 3 SCC 363
- (v) Deoraj vs. State of Maharashtra, (2004) 4 SCC 697
- (vi) Union of India vs. Modilutf Ltd., (2003) 6 SCC 65
- (vii) State of U.P. vs. Vishweshar, 1995 (suppl.) 3 SCC 590
- (viii) Bharatbhushan vs. Abdul Khalik, 1995 (suppl.) 2 SCC 593
- (ix) Shiv Shankar vs. Board of Directors, 1995 (suppl.) 2 SCC 726
- (x) Commissioner vs. Ashok Kumar Kohli, JT 1995 (8) SC 403
- (xi) Morgan Stanley Mutual Fund vs. Kartickdas, (1994) 4 SCC 225
- (xii) Assistant Collector vs. Dunlop India Ltd., 1985 (1) SCC 260

**21.1 Interim mandatory injunction:** The interim relief granted to the plaintiffs by the appellate Bench of the High Court in the present case is a mandatory direction to hand over possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the court; much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power, the governing principles whereof would hardly require a reiteration inasmuch as the same which had been evolved by the Supreme Court in Borab Cawasji Warden, (1990) 2 SCC 117, quoted herein, has come to be firmly embedded in our jurisprudence. See : Mohd. Ehtab Khan & Others Vs Khushnuma Ibrahim Khan & Others, (2013) 9 SCC 221.

**21.2 Interim order granting final relief not to be passed:** Interim relief or interim order which virtually grants final relief in the case, cannot be granted. See:

- (i) Indore Development Authority vs. Mangal Amusement Pvt. Ltd., AIR 2011 SC 199.
- (ii) Union of India vs. Modilutf Ltd., (2003) 6 SCC 65.

**22. Interim injunction in favour of defendant in a suit filed by plaintiff:** An interim injunction in favour of defendant in a suit filed by plaintiff can be granted by court even u/s 151 CPC and the court is not bound in such cases by the limitations u/o 39, rules 1 & 2 CPC. However such interim injunctions should be granted in very rare and exceptional circumstances. See: Shiv Ram Singh vs. Smt. Mangara, 1988 ALJ 1516 (All).

- 22.1 Interim injunction in favour of defendant in a suit filed by plaintiff:** In a suit filed by the plaintiff, it is open to the defendant to file an application only u/O 39, Rule 1(a) of CPC seeking temporary injunction and the Court on being satisfied that a case is made out for grant of such injunction, can grant the same in its discretion. See: Smt. Shakunthamma & Others Vs. Smt. Kanthamma & Others, AIR 2015 Karnataka 13 (Full Bench).
- 22.2 Plaintiff alone, and not the defendant, can maintain application for temporary injunction under clauses (b) & (c) of Order 39, rule 1 CPC:** The relief under Order 39, Rule 1(b) and (c) is available only to the plaintiff and the defendant cannot maintain an application for the said reliefs in a suit filed by the plaintiff, irrespective of the fact that his right to such relief arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit. However, it is open to the defendant to maintain a separate suit against the plaintiff and seek relief provided under Order 39, Rule 1(b) and (c) of the Code. See: Smt. Shakunthamma & Others Vs. Smt. Kanthamma & Others, AIR 2015 Karnataka 13 (Full Bench).
- 23. Objection by defendant to decide any of the following matters before hearing and disposal of temporary injunction application:**
- (i) Maintainability of suit
  - (ii) Jurisdiction
  - (iii) Valuation
  - (iv) Court Fee
  - (v) Limitation
  - (vi) Res judicata
  - (vii) Non impleadment of party
- 23.1 Objection as to jurisdiction:** Objection as to jurisdiction to be decided by the court as a preliminary issue would not prevent the court from passing interim orders while the decision on question of jurisdiction is pending if called for in the facts and circumstances of the case. Any violation of such interim order would be punishable under Order 39, rule 2-A CPC even if later on the court holds that it had no jurisdiction to entertain the suit. See: Tayabhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd., (1997) 3 SCC 443.
- 23.2 Valuation, Court Fee or maintainability of suit:** When there is challenge to jurisdiction, valuation or sufficiency of court fee or maintainability of suit, the court is to first decide these issues and then to decide the application for temporary injunction and other matters. See: Arun Kumar Tiwari vs. Smt. Deepa Sharma, 2006 (1) ARC 717 (All) (DB).

- 23.3 Non-impleadment of party:** A disputant is entitled to an interim order provided he is a party thereto. If for one reason or the other, he cannot be impleaded as a party to the proceeding, the court would have no jurisdiction to pass any interim order in his favour. If the impleadment application is not maintainable, it is required to be dismissed in limine. It cannot be entertained only for pressing an interim order. Law does not contemplate exercise of such a jurisdiction by a court of law. Any such order passed is coram non iudice. See: *Shyamali Das vs. Illa Chowdhary*, (2006) 12 SCC 300.
- 23.4 Jurisdiction/ maintainability/ limitation/ valuation/ court fee/ res judicata:** It is settled law that an issue concerning res judicata is an issue of law and therefore there is no impediment in treating and deciding such an issue as a preliminary issue. Such like issues can be treated and decided as issues of law under Order 14, rule 2(2) CPC. Similarly, the other issues concerning limitation, maintainability, court fee can always be treated as preliminary issues as no detailed evidence is required to be led. Evidence of a formal nature even with regard to a preliminary issue has to be led because these issues would either create a bar in accordance with law in force or they are jurisdictional issues. See:
- (i) *Hari Das vs. Usha Rani Banik*, (2006) 4 SCC 78
  - (ii) *Pandurang Dhoni Chougule vs. Maruti Hari Jadhav*, AIR 1966 SC 153 (Five- Judge Bench) = (1966) 1 SCR 102.
- 24. Section 38 & 41 of Specific Relief Act, 1963 and ad interim injunction:** For grant or refusal of ad interim injunction, court has to take into consideration the provisions of Section 38 and 41 of the Specific Relief Act, 1963 read with Order 39, rule 2, sub-rule (2), clause (a) to Proviso thereto as added in U.P. w.e.f. 1.1.1977. See:
- (i) *M/s. Bagla Advertising Pvt. Ltd. vs. U.P. SIDC Corp. Ltd.*, 2007 (67) ALR 334 (All)(D.B.)
  - (ii) *Dalpat Kumar vs. Prahlad Singh*, 1992 (1) CCC 73 (SC)
  - (iii) *Shiv Sharan Goel vs. M/s. Kedarnath, Omprakash*, 1989 (1) ARC 351
  - (iv) *Municipal Corporation Delhi vs. Suresh Chandra Jaipuria*, AIR 1976 SC 2621
- 24.1 Mandatory injunction to enforce specific performance of agreement for sale not to be granted :** Where the plaintiff had filed suit for mandatory injunction to direct the defendant to take balance consideration and execute the sale deed as promised in the agreement for sale, it has been held by the Supreme Court that proper relief to the plaintiff was to file a suit for specific performance of contract, and not the suit for mandatory injunction. **See: Atma Ram Vs. Charanjit Singh, (2020) 3 SCC 311.**

- 24.2 A prospective purchaser under agreement for sale in possession of property can seek intermin injunction to protect his possession:** In this regard, reference may be had to two other decisions of the Delhi High Court in *Imtiaz Ali v. Nasim Ahmed* and *G. Ram v. DDA* which inter alia observe that an agreement to sell or the power of attorney are not documents of transfer and as such the right, title and interest of an immovable property do not stand transferred by mere execution of the same unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882, is executed and is got registered under Section 17 of the Registration Act, 1908. The decision of the Supreme Court in *Suraj Lamp & Industries (P) Ltd. v. State of Haryana* also deprecates the transfer of immovable property through sale agreement, general power of attorney and will instead of registered conveyance deed. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53-A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transfer or any person claiming under him. **See: Ghanshyam Vs. Yogendra Rathi, (2003) 7 Supreme Court Cases 361 (paras 15 & 16)**
- 24.3 Injunction in a suit for specific performance of contract:** Grant of temporary injunction in a suit for specific performance of contract for sale is not proper when there are doubts as to the existence of a concluded contract and there is delay in instituting the suit. Grant of relief in a suit for specific performance is itself a discretionary remedy and a plaintiff seeking temporary injunction will therefore have to establish a strong prima facie case on the basis of undisputed facts. The conduct of the plaintiff will also be a very relevant consideration for purposes of injunction. **See: Ambalal Sarabhai Enterprise Limited Vs. KS Infrastructure LLP Limited, (2020) 5 SCC 410**
- 24.4 Agreement for sale does not convey title to prospective purchaser:** Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53-A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him. **See: Ghanshyam Vs. Yogendra Rathi, (2023) 7 SCC 361.**

- 24.5 Writ petition under Article 227 of the Constitution against refusal of interim injunction maintainable:** A writ petition under Article 227 of the Constitution of India against an order passed by the civil court refusing to grant interim injunction under Order 39, rules 1 & 2 CPC is maintainable. See: State of Jharkhand Vs. Surendra Kumar Srivastava, AIR 2019 SC 231.
- 24.6 Writ Petition under Article 226 not to be entertained when alternative remedy by way of civil suit or proceeding u/s 145 CrPC is available:** In the case noted below, a petition under Article 226 of the Constitution of India was filed before the High Court seeking relief of possession over the disputed flat. The Supreme Court held that remedy to the petitioner was available before the civil court in the form of a civil suit or before the criminal court u/s 145 CrPC and the extraordinary jurisdiction of High Court under Article 226 of the Constitution could not have been invoked by the petitioner. See: Roshina T. Vs. Abdul Azeez K.T., AIR 2019 SC 659.
- 25. License by Municipal Board & injunction:** No injunction regarding cancellation of licence granted by municipal board can be granted by civil court as Section 61 of the Uttar Pradesh Municipalities Act, 1916 provides for complete mechanism for redressal of such disputes and Section 41(h) of the Specific Relief Act, 1963 bars the jurisdiction of civil courts. See: Chhedilal vs. Rajaram, AIR 2008 (NOC) 334 (All).
- 26. Revival of temporary injunction on restoration of suit:** Upon restoration of suit which had been dismissed for default, the interim injunction granted earlier stands automatically revived unless the court expressly or impliedly excludes its operation. See:
- (i) Vareed Jacob vs. Sosamma Geevarghese, AIR 2004 SC 3992 (Three-Judge Bench)
  - (ii) Ishrat Jahan vs. V ADJ, Hardoi, 2005(2) AWC 1762 (All) ( LB).
- 26.1 Restoration of writ petition and revival of interim order passed therein:** Relying upon the case of Vareed Jacob vs. Sosamma Geevarghese, (2004) 6 SCC 378, the Lucknow Bench of the Hon'ble Allahabad High Court has held that: "This Court has taken note of the fact that the writ petition was dismissed in default on 4.02.2004 and within four days i.e. on 08.02.2004, an application for restoration was submitted by the learned Counsel for the petitioner No. 1 which remained pending for about two years and ultimately on 27.09.2006, the said restoration application was allowed and the writ petition was restored to its original number. The writ petition was restored in toto. Applying the principle of law laid down by Hon'ble the Supreme Court of India (Three Judges Bench) in the case of Vareed Jacob (supra), this Court



is also of the view that after restoration of the writ petition, the interim order granted by a Division Bench of this Court on 30.09.1985 has become operative and the petitioner ought to have been allowed to continue as Principal of the Institution immediately after 27.09.2006". (Para 27). See: Mrs. Saroj Chaudhary Vs. State of UP, 2007 (25) LCD 765 (Lucknow Bench).

**26.2 Temporary injunction not to be granted unless the suit is restored:**

Where the suit wherein temporary injunction was granted was dismissed in default and during the pendency of proceedings of the restoration application, an application for grant of temporary injunction was made, it has been held by the Allahabad High Court that no temporary injunction can be granted unless the suit is restored as the temporary injunction can be issued only in suit and not after the disposal of the suit. See:

- (i) Jagdhari vs. Vth ADJ, Azamgarh, 1992 AWC 1152 (All)
- (ii) Mohammad Ibrahim Khan vs. Pateshari Prasad Singh, AIR 1960 All 252 (D.B.)

**26.3 Extension of already discontinued interim injunction or stay order:** An interim injunction order or stay order when extended to a particular date but not extended further beyond that particular date would be presumed to have ceased from the date of non-extension. See: Ashok Kumar vs. State of Haryana, AIR 2007 SC 1411.

**26.4 Meaning of “Stay Order” ?:** “While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.” See: Shree

**26.5 Discharge of temporary injunction:** In view of the second Proviso added to Rule 4 of Order 39 CPC in the State of U.P. since 1.2.1977, the court shall set aside the order of injunction if the party in whose favour the interim order of injunction was granted, appears to be dilating the proceedings or otherwise abuses the process of the court.

**27. Declaratory suit and injunction:** In the cases noted below, the Supreme Court has held that in a suit for declaration of title simpliciter, the court has power under Order 39, rules 1 and 2 CPC or even under Section 151 CPC to grant ad interim injunction pending the suit. See:

- (i) Ramji Rai Vs. Jagdish Mallah, AIR 2007 SC 900
- (ii) Smt. Rajnibai vs. Smt. Kamla Devi, AIR 1996 SC 1946.

**27.1 Suit for mere permanent injunction without seeking declaration of title maintainable:** A suit for decree of perpetual injunction restraining the defendant from interfering with the possession of plaintiff without seeking relief of declaration of title is maintainable and interim injunction can be granted in such suit. See: Corporation of City of Bangalore vs. M. Papaiah, AIR 1989 SC 1809.

**27.2. Injunction suit without seeking declaration of title maintainable if there is no cloud on title of plaintiff:** A prayer for declaration of title in a suit for injunction will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title when some apparent defect in his title to a property or when some prima facie right of a third party over it is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction with permission

of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief even after the suit for injunction is dismissed where the suit raised only the issue of possession and not any issue of title. In the present case, there was no issue involved about the title of the plaintiff and his father. It is not as if the respondent-defendants had set up a title in themselves or were claiming through somebody who was claiming the title. Their plea was of adverse possession against the appellant which presupposes that the appellant was the owner. When in a suit simpliciter for a perpetual injunction based on title, the defendant pleads perfection of his title by adverse possession against the plaintiff or his predecessor, it cannot be said that there is any dispute about the title of the plaintiff. Hence, the plaintiff need not claim a declaration of title in such a case as the only issues involved in such a suit are whether the plaintiff has proved that he was in possession on the date of the institution of the suit and whether the defendant has proved that he has perfected his title by adverse possession. Therefore, in the present case, it was not necessary for the appellant/plaintiff to claim a declaration of ownership in the suit for injunction. There was no cloud on his title. Therefore, the suit, as originally filed, was maintainable. **See: K.M. Krishna Reddy Vs. Vinod Reddy, (2023) 10 SCC 248 (paras 16 & 17).**

- 27.3 Suit for mere permanent injunction without seeking declaration of title maintainable:** Suit for mere permanent injunction without seeking declaration of title is maintainable if the plaintiff does not state in the plaint that there is a dispute as to title of the suit property. **See: A. Subramanian Vs R. Pannerselvam, AIR 2021 SC 821**
- 27.4. Mere injunction suit against State without seeking declaratory relief not maintainable:** Bare injunction suit to restrain State Authorities from acting in a particular manner without seeking declaratory relief as to illegality of orders/actions of State Authorities based on which State Authorities were seeking to act is not maintainable as no government order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. **See: Ratnagiri Nagar Parishad Versus Gangaram Narayan Ambekar And Others, (2020) 7 SCC 275.**
- 27.5 Declaration of title alongwith injunction when necessary?:** In a suit for injunction claiming the relief of declaration of title when or when not would be necessary has been clarified by the Supreme Court in the case noted below as under:
- (i) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to

sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

- (ii) As a suit for injunction simpliciter is concerned only with possession normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.
- (iii) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific or implied as noticed in *Annamuthu Thevar* (Supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.
- (iv) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight forward the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatious or wrongfully makes a claim or tries to encroach upon his property. The Court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case. See:

(i) *Anathula Sudhakar Vs. P. Buchi Reddy*, 2008(2) AWC 1768 (SC).

(ii) *T.V. Ramakrishna Vs M.Mallappa*, AIR 2021 SC 4293

**27.6. Declaration of title necessary if plaintiff himself states in plaint about dispute of title:** Seeking relief of declaration of title is necessary in a suit for permanent injunction if plaintiff himself states in the plaint about dispute of title: See: *A. Subramanian Vs R. Pannerselvam*, (2021) 3 SCC 675 (Three-Judge Bench)

**27.7. Declaratory suit and interim injunction:** In a suit for mere declaration, no ad-interim injunction can be granted. See: *Mohammad Ibrahim Khan vs. Pateshwari Prasad Singh*, AIR 1960 All 252 (DB).

**28. Natural resources like forest, tanks, ponds, hillocks and mountains etc. must be protected against any sort of construction activity or encroachment or allotment etc.:** Forests, tanks, ponds, hillocks and mountains etc. are nature's bounty. They help maintain the delicate ecological balance and need to be protected for that reason. The High Court proceeded to hold that considering the report of the SDO the area of 10 biswas only could be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. It is difficult to sustain the impugned order of the High Court. There is a concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for the purpose of house building or any allied purposes. The material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention on developing the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment of non-abadi sites. Natural resources, Conservation of--Water bodies/resources--Artificial tanks--Preservation of--Right to--Entitlement to--Held, though natural water storage resources must be protected and restored if fallen in disuse, this principle cannot be applied in relation to artificial tanks--Tank in question not a natural one--Only rain water could be collected in it--It was in a dilapidated condition for a long time and had been used as a dumping yard and sewage collection pond--No shortage of water in village where said tank existed--Held, it was not a case where resurrection of said tank should be directed--However, direction made to State and Gram Panchayat to see that other tanks in or around the village were properly maintained, there was no water shortage and ecology was preserved. See:

- (i) *Hinch Lal Tiwari Vs. Kamla Devi & Others*, (2001) 6 SCC 496
- (ii) *Susetha Vs. State of T.N. & Others*, (2006) 6 SCC 543
- (iii) *Intellectuals Forum Vs. State of A.P.*, (2006) 3 SCC 549

- (iv) Animal and Environment Legal Defence Fund Vs. Union of India, AIR 1997 SC 1071= (1997) 3 SCC 549
- (v) M.C. Mehta (Badkhal and Surajkund Lakes Matter) Vs. Union of India, (1997) 3 SCC 715.
- (vi) People United for Better Living in Calcutta Vs. State of W.B., AIR 1993 Cal 215
- (vii) T.N. Godavarman Thirwulpad (99) Vs. Union of India, (2006) 5 SCC 47
- (viii) L. Krishnan Vs. State of T.N., AIR 2005 Mad 311
- (ix) Bombay Dyeing & Mfg. Co. Ltd (3) Vs. Bombay Environment Action Group, (2006) 3 SCC 434

**29. Public parks/play grounds and temporary injunction against conversion thereof:** Interpreting the provisions of Section 13 of the **U.P. Urban Planning and Development Act, 1973** and Section 2 of the **U.P. Parks, Play Grounds and Open Spaces (Preservation and Regulation) Act, 1975**, it has been held that the development authority or even the State Government cannot make any constructions upon public parks, play grounds, stadium etc. and any such illegal constructions thereon can be ordered by the court to be dismantled. See:

- (i) D.D. Vyas vs. Ghaziabad Development Authority, 1993 ALJ 86 (All)(D.B.)
- (ii) Bangalore Medical Trust vs. B.S. Mudappa, AIR 1991 SC 1902
- (iii) Arun Kumar vs. Nagar Mahapalika, Allahabad, 1987 All. LJ 1038 (D.B.)
- (iv) Ram Das Shenoy vs. Chief Officers, Town Municipal Council Udipi, AIR 1974 SC 2177

**30. Roadside land and injunction against removal of encroachment thereon:** No temporary injunction can be granted against encroachment against removal of encroachment by construction of temporary kiosks, Gumties and shops on roadside land. See:

- (i) Town Area Committee, Naraini Banda vs. SSP Banda, 1998 (33) ALR 322 (All)(D.B.)
- (ii) Raj Mani vs. State of U.P., 1995 (25) ALR 281 (All)(D.B.)

**30.1 Public road and injunction against removal of encroachment thereon:** No temporary injunction can be granted against removal of encroachment over public road as no person has right to occupy the public roads. Public road is meant for traffic only and for no other purpose. **Footpaths, pavements, and the land in between the public road and the houses**

**alongside such public roads** are public property and not the land for private use. Existence of dwelling on pavements is unquestionably a source of nuisance and injunction cannot be granted against removal of such encroachments are nuisances. See:

- (i) Durga Prasad vs. State of U.P., 1999 (36) ALR 64 (All)(D.B.)
- (ii) Sushil Kumar Agarwal vs. Executive Engineer, PWD, Moradabad, 1998 (1) AWC 2(20) (NOC) (All)(D.B.)
- (iii) Raj Mani vs. State of U.P., 1995 (25) ALR 281 (All)(D.B.)
- (iv) Bala Din Yadav vs. Ramdulare, AIR 1990 All 19

**30.2 Observance of principles of natural justice not necessary if the encroachment on public land is of recent origin:** The Constitution does not put an absolute embargo on the deprivation of life of personal liberty but such a deprivation must be according to the procedure in the given circumstances fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic one to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity, of hearing which would be a tardious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Municipal Corporation allows settlement of encroachers for a long time for reasons best known to them and reasons are not far to seek then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment

removed. See: Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan, AIR 1997 SC 152 (Para 9).

**30.3 License of tehbazari on roadside land and injunction against removal thereof:** No public authority has any right to issue license encouraging encroachment over public road or public land. License to conduct business on roadside land by payment of tehbazari does not confer any right upon the person paying tehbazari and doing business and temporary injunction can not be issued against the eviction of such persons. See:

- (i) Leela Dhar Joshi vs. State of U.P., 1998 ALJ 986 (All)(D.B.)
- (ii) Sushil Kumar Agarwal vs. Executive Engineer, PWD, Moradabad, 1998 (1) AWC 2(20) (All) (NOC)
- (iii) Raj Mani vs. State of U.P., 1995 (25) ALR 281 (All) (D.B.)

**31. Injunction by inferior court restraining judicial proceeding before superior court:** Court has no jurisdiction either u/s 41(b) of the Specific Relief Act, 1963 or u/s 151 CPC to grant temporary injunction restraining a person from instituting any proceeding which such person is otherwise entitled to institute in a court not subordinate to that from which the temporary injunction is sought. If final relief asked for cannot be granted, the temporary injunction can hardly be granted. See: Cotton Corporation of India Ltd. vs. United Industrial Bank Ltd., AIR 1983 SC 1272.

**32. Educational institutions and temporary injunctions in the administration of internal affairs of university:** Order 39, rule 2, sub-rule 2, U.P. Amendment, Proviso, clause (h) CPC). In a matter touching either the discipline or the administration of the internal affairs of a University, Courts should be most reluctant to interfere. They should refuse to grant an injunction unless a fairly good prima facie case is made out for interference with the internal affairs of educational institutions. See: Varanaseya Sanskrit Vishwavidyalaya vs. Dr. Rajkishore Tripathi, AIR 1977 SC 615.

**32.1 Declaration of result of examination:** Direct intervention by court in the matter of university regarding declaration of result (LL.M. Examination) may lead to serious and disastrous results and repercussions. It would be proper to leave such matters to expert wisdom of the university authorities. See: Satpal Singh vs. Vice-Chancellor, Chaudhary Charan Singh University, Meerut, 1999 (1) AWC 2(17) (NOC) (All).

**32.2 Revaluation of answer books:** In deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matters falling within



the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice. See: Bhushan Uttam Khare vs. The Dean, B.J. Medical College, AIR 1992 SC 917.

**32.3 Issue of admit card or appearance in examination:** Court cannot grant either interim prohibitory injunction against the authorities of the educational institution by restraining them from precluding the examinee from appearing in the examination nor can issue direction for issuing admit card. See: Council for ISCE, New Delhi vs. District Judge, Agra, 1999 (35) ALR 221 (All).

**32.4 Admission in University (Order 39, rule 2, sub-rule 2, U.P. Amendment, proviso, clause (h) CPC):** In view of the alternative remedy for agitating the matter before the Chancellor u/s 68 of the U.P. State Universities Act, 1973, injunction to grant admission cannot be issued. See: Satyaprakash Singh vs. Vice-Chancellor, Dr. Bhimrao Ambedkar Vishwavidyalaya, Agra, AIR 1998 All 66.

**33. Co-owners and temporary injunction: Interference into possession of co-sharer by co-sharer.** Possession of one co-owner is always possession of all co-owners. If the disputed land is in joint possession of both parties or of all co-owners, no injunction can be granted against interference into possession of one co-owner by another co-owner. See:

- (i) Bauram vs. Munni, 2008 (26) LCD 1220 (All)
- (ii) Jahar Singh vs. Board of Revenue, 2005 (3) AWC 2877 (All)
- (iii) Ajai Pal Singh vs. Shitla Bux Singh, 2005 (2) AWC 2001 (All) (LB)

**33.1 Transfer/eviction/construction/demolition by co-owner:** No injunction can be granted in favour of a co-sharer and against other co-sharer of an undivided property except:

- (a) against ouster or eviction of co-sharer by one or more co-sharers,
- (b) against construction or demolition of undivided property by one or more co-sharers,
- (c) against transfer or sale etc. of undivided immovable property by one or more co-sharers. See:
  - (i) Deepali Bhattacharya vs. Ramji, 1990 (16) ALR 609 (All)
  - (ii) Vidyamati Mandir, Ghaziabad vs. Rajindra Nath, 1991 AWC 786 (All)(D.B.)
  - (iii) Gangubai Vs. Sita Ram, AIR 1983 SC 742

**33.2 Transferee-cum-co-sharer and temporary injunction:** The suit property was purchased originally by the father and mother of the appellant/plaintiff. The superstructure on the land was constructed subsequent to the purchase. After the death of the mother the appellant and his father as surviving joint tenants came to own the entire property. Under an agreement the appellant and his father, agreed to hold the same as tenants in common, each having an equal undivided share therein so that each can dispose of his undivided share in the property. Subsequently the appellant's father transferred his undivided half share in the suit property in favour of his another son. Thus the appellant and his brother came to hold an equal undivided one-half share each, as tenants in common in respect of the said property. Appellant's brother died intestate. His widow and his two minor sons sold their undivided one-half share in the said property to the vendee. The appellant filed a suit against vendors i.e. his brother's wife and her sons u/s 33 of TP Act. The suit was filed on the ground that the suit property was a dwelling house belonging to an undivided family, that there has not been any division of the said property at any time, that the appellant-plaintiff and his deceased brother during his lifetime were for convenience occupying different portions, the plaintiff occupying the first floor while the deceased brother was occupying the ground floor. After the death of brother his wife and sons continue to be in occupation of that portion which was in the occupation of brother. In the circumstances the vendee a stranger to the family has no right to have joint possession or common enjoyment of the property along with the plaintiff on the basis of the purchase of the undivided share. On this ground the appellant-plaintiff claimed the suit property he has also claimed the interim injunction restraining the vendors from parting with possession of the said property or any part thereof and/or inducting the vendee into the suit property or any part or portion thereof and a similar injunction restraining the vendee from entering into or taking possession and/or remaining in possession or enjoyment of the suit property or part thereof. Held, that some notions of coparcenary property of a Hindu joint family which may not be quite accurate in considering Section 44 but what is relevant for the purpose of these proceedings was whether the selling house belonged to an undivided family. Even if the family is divided in status in the sense that they were holding the property as tenants in common but undivided qua the property that is the property had not been divided by metes and bounds it would be within the provisions of Section 44 of the Act. In the absence of a document evidencing partition or absence of a document evidencing partition of the suit house by metes and bounds and on the documentary evidence showing that the property was held by the appellant and his brother in equal undivided shares, it could be said that the plaintiff-appellant has shown a prima facie case that the dwelling house belonged to an undivided family consisting of

himself and his brother. Prima facie, therefore, the transfer by the vendee would come within the mischief of second paragraph of Sec.44. While Sec. 44 does not give a transferee of a dwelling house belonging to an undivided family a right to joint possession and confer a corresponding right on the other members of the family to deny the right to joint possession to a stranger transferee, Sec.4 of the Partition Act gives a right to a member of the family who has not transferred his share to purchase the transferee's share on a value to be fixed in accordance with law when the transferee filed a suit for partition. Both these are valuable rights to the members of the undivided family whatever may be the object or purpose for which they were conferred on the right to joint possession is denied to a transferee in order to prevent a transferee who is an outsider from forcing his way into a dwelling house in which the other members of his transferee's family have a right to live. It is considered to be illegal and the only right of the stranger purchaser is to sue for partition. All these considerations would go only to show that denying an injunction against a transferee in such cases would prima facie cause irreparable injury to the other members of the family. See: *Dorab Cawasji Warden Vs. Coomi Sorab Warden*, AIR 1990 SC 867.

**33.3 Undivided share of co-parcener can be transferred but possession cannot be handed over to him:** An undivided share of co-parcener can be transferred but possession cannot be handed over to vendee unless the property is partitioned by metes and bounds either by decree of court in partition suit or by settlement among co-sharers. See:

- (i) *Gajara Vishnu Gosavi Vs. Prakash Nanasahed Kamble*, 2010 (2) SCCD 1105 (SC)
- (ii) *Ramdas Vs. Sitabai*, JT 2009(8) SC 224
- (iii) *M.V.S. Manikayala Rao Vs Narasimhaswami*, AIR 1966 SC 470
- (iv) *Sidheshwar Mukherjee Vs, Bhubneshwar Prasad Narain Sing*, AIR 1953 SC 487

**33.4 Interim injunction against transfer of immovable property can be granted :** Interim injunction against transfer of immovable property can be granted by the court u/o 39, Rule 1 CPC. See: *Paras Nath Singh Vs Smt. Sirtaji Kunwari*, 2012 (117) RD 143 (All) (LB).

**33.5 Injunction when co-sharer having lost ownership rights:** Where parties were co-sharers and no suit for partition was filed by the plaintiff's brother and the plaintiff was not exercising ownership rights on the suit property, it has been held that the plaintiff was not entitled to the relief of injunction restraining defendant from raising construction on the property. See: *Sheoraj Vs. M/s Accord Infrastructure Pvt. Ltd.*, 2011 (2) ALJ 501(All) (DB).

- 34. Suit for declaration of matrimonial status maintainable before Family Court and not before Civil Court:** A suit for declaration regarding matrimonial status of a person has to be filed only before the Family Court and not before the Civil Court, be it affirmative declaration or negative declaration. It is wrong to say that negative declaration is not within the jurisdiction of the Family Court. See: Balram Yadav Vs. Phulmaniya Yadav, AIR 2016 SC 2161.
- 34.1 Second marriage and temporary injunction:** General law in CPC i.e. Order 39, rules 1 & 2 CPC can be resorted to, even ex-parte, to restrain party from contracting or performing void Act, i.e., second marriage under the Hindu Marriage Act, 1955, though being a special statute, does not provide for grant of interim injunction. See: Km. Kirti Sharma vs. Civil Judge (Senior Division), Etah, 2005 (2) AWC 1741 (All).
- 34.2 Child marriage and injunction by judicial magistrate under the Prohibition of Child Marriage Act, 2006:** The Child Marriage Restraint Act, 1929 has been repealed since 11.1.2007 and the new Act “**The Prohibition of Child Marriage Act, 2006**” has come into force since 11.01.2007. Under the 2006 Act, “child” means a person who, if a male, has not completed 21 years of age and if a female, has not completed 18 years of age. Under Section 13 of The Prohibition of Child Marriage Act, 2006, a Judicial Magistrate or Metropolitan Magistrate, on an application of the Child Marriage Prohibition Officer or on receipt of an information through a complaint or otherwise from any person, is competent to issue injunction restraining the solemnization of child marriage. In case of any urgency, the Judicial Magistrate or Metropolitan Magistrate can issue an interim injunction without giving any notice to the opposite parties.
- 35. Agreement for sale and temporary injunction:** Where the purchaser/plaintiff had sought for injunction restraining the seller/defendant from alienating the property on the basis of agreement for sale, it has been held by the Allahabad High Court that injunction cannot be granted by court on the basis of agreement for sale in view of the provisions of Section 41(h) of the Specific Relief Act, 1963 read with Order 39, rules 1 & 2 CPC as equally efficacious relief can be obtained in suit for specific performance of contract. See: Rajendra Kumar vs. Mahendra Kumar Mittal, AIR 1992 All 35 (DB).
- 35.1 Agreement for sale and temporary injunction to protect possession:** Plaintiff claimed to be in possession of property in part performance of agreement to sell and claiming to have inducted tenant. Fact that was in

possession of suit property was undisputed. Interim Injunction by trial court was granted against defendant not to evict the plaintiff without following due process of law. Single Judge of the High Court reversed the order of the Trial Court on the ground that the plaintiff had filed suit for injunction without reserving his right to sue for relief of specific performance and, therefore, the plaintiff was not entitled to injunction. The Supreme Court held that the said view of the single judge of the High Court was improper and that of the Trial Court was the correct view. The order of the High Court was set aside. See: Lakshmi Vs E. Jayaram, AIR 2013 SC 2939.

**35.2 Injunction restraining sale of property mentioned in agreement for sale:**

In a suit for specific performance of agreement, the owner of the property was trying to sell the property to third party. The trial court by way of interim injunction directed the parties to maintain status quo with the condition that the purchaser shall deposit the balance amount of consideration. The High Court set aside the order of status quo passed by the trial court. But the Supreme Court held that the High Court was not justified in setting aside the order of status quo passed by the trial court and set aside the order of the High Court by holding the order of the trial court valid. See: N. Srinivasa vs. Kattukaran Machine Tools Ltd., AIR 2009 SC 2217.

**36. Possession and injunction:** If the plaintiff is in possession of the suit property, he can, on the strength of his possession, resist interference from defendant who has no better title than himself and get injunction restraining the defendant from disturbing his possession. See: M. Kallappa Setty vs. M.V. Laxminarayana Rao, AIR 1972 SC 2299

**36.1 Party in lawful possession of property cannot be evicted without applying due process of law:** A party in lawful possession of the property cannot be evicted without applying due process of law and such party is entitled to ad interim injunction for protection of his lawful possession pending the civil suit. See: N. Umapathy vs. B.V. Muniyappa, AIR 1997 SC 2467.

**36.2 No injunction against dispossession if plaintiff not found in possession:** Injunction cannot be granted against dispossession if the party seeking injunction is not found in possession. See:

- (i) Balasubramanian Vs M. Arockiasami, AIR 2021 SC 4221
- (i) S.R. Batra Vs. Smt. Taruna Batra, 2007 (67) ALR 175 (SC).
- (ii) Terene Traders vs.Ramesh Chandra Jamnadas, AIR 1987 SC 1492

- 36.3 Doubtful possession and injunction:** When it is doubtful to come to the conclusion that plaintiff has possession over the property, Order 39, rule 1(c) CPC has no application and injunction cannot be granted. See: Dasnam Naga Sanyasi vs. Allahabad Development Authority, Allahabad, AIR 1995 All 418.
- 36.4 Possession when must for injunction?:** As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession. See: Anathula Sudhakar Vs. P. Buchi Reddy, 2008(2) AWC 1768 (SC).
- 36.5 No injunction to watchman/care taker/agent/servant/ licensee (lisensee) being persons in gratuitous possession/permissive possession against dispossession by owner of the premises :** Suit for injunction by watchman/care taker/agent/servant being persons in gratuitous possession/permissive possession (licence) against dispossession by owner of the premises is not maintainable. Such person holds property on behalf of principal (owner) and acquires no right or interest therein irrespective of long possession. Protection of courts can be granted or extended only to a person who has valid subsisting rent agreement, lease agreement or license agreement in his favour. See: A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalya Nandhavana Paripalanai Sangam, (2012) 6 SCC 430.
- 36.6 Trespasser cannot seek injunction against true owner of property:** It is settled law that injunction would not be issued against the true owner of the property. Issuance of injunction is absolutely a discretionary and equitable relief. Injunction is personal right u/s 41(J) of the Specific Relief Act, 1963, and for an injunction, plaintiff must have personal interest in the matter. Even assuming that the party had any possession over the property but if his possession is wholly unlawful possession of a trespasser then an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession as against the owner. Pretext of dispute of identify of the land should not be an excuse to claim injunction against true owner. See: Premji Ratansey vs. Union of India, 1994 III ADSC (C) 514 (SC).
- 36.6.1. Trespasser in established possession of property can seek injunction.** Even a trespasser in established possession of property can seek

injunction. See: A. Subramanian Vs R. Pannerselvam, (2021) 3 SCC 675 (Three-Judge Bench)

**36.7 Injunction against true owner of property:** Where the party was put in lawful possession of the property by Tehsildar after partition, grant of interim injunction under Order 39, rules 1 & 2 CPC against such lawful owner of the property has been held by the Supreme Court as improper. See: Hanumanthappa vs. Muninarayanappa, 1997 (29) ALR 392 (SC).

**36.8 No injunction against a party in lawful of property:** Where the party was in possession of the immovable property on the basis of sale certificate issued by court in execution of decree, it has been held that the possession of the party cannot be said to be that of a trespasser and injunction cannot be granted against such party in possession. See: Anand Prasad Agarwalla vs. Tarkeshwar Prasad, AIR 2001 SC 2367

**36.9 Possession and injunction: Dispossession & injunction: Adverse possession and injunction:** A person claiming the title by virtue of adverse possession can maintain a suit under Section 65 of the Limitation Act, 1963 for declaration of title or for a permanent injunction seeking protection of his possession thereby restraining the defendant or for restoration of possession in case of illegal dispossession. See:

(i). Ravinder Kaur Grewal Vs. Manjit Kaur, 2019 SCC Online SC975 (Three-Judge Bench).

(ii). Narendra Kumar Tripathi Vs. Karuna Auddy, (2020) 3SCC 220

**Note:** Three contrary previous decisions of the Supreme Court by Two-Judge Benches reported in (i) Gurudwara Sahab Vs. Gram Panchayat Village Sirthala, (ii) State of Uttarakhand Vs. Mandir Shri Lakshmi Siddh Signature Not Verified Maharaj and (iii) Dharampal Vs. Punjab Waqf Board have now been over-ruled by the judgment in Ravinder Kaur Grewal's case.

**36.10. Injunction not to granted if possession not proved:** Plaintiff sought mandatory injunction restraining defendant from causing interference in possession of plaintiff and from causing damage to suit property, No documentary evidence was produced by plaintiff to establish his possession over the suit property. Plaintiff also failed to prove his title to seek injunction. Refusal to grant injunction was held proper. See: **Gyan Chand Vs State of UP, AIR 2021 (NOC) 280 (All).**

- 37. Contract of personal service and temporary injunction:** An employee of a private company cannot seek injunction under Order 39, rules 1&2 CPC against his suspension as no civil suit is maintainable in relation to a contract of personal service not enforceable u/s 14(b) of the Specific Relief Act, 1963. See: Mahesh Chand Tyagi vs. Auric Styles Private Ltd., 1997 (29) ALR 258 (All).
- 38. Tender and temporary injunction:** Where in a suit, there were strong circumstances to show that the plaintiff was not competitively sound to make competitive offer, it has been held that it was a good ground for not awarding contract to him as no prima facie case was made out in favour of the plaintiff and court was justified in not granting injunction in favour of the plaintiff. See: Vikura Industries vs. G.M. Ordinance Factory, Kanpur, 2000 (3) AWC 2/31 (NOC) (All).
- 39. Damage to crops: Temporary injunction cannot be granted:** Where a brick kiln was situate near a mango grove, it has been held that if the damage likely from the smoke of the brick kiln was only to the crops and not to the trees or groves, the damages being ascertainable, interim injunction under Order 39, rules 1 & 2 or u/s 151 CPC cannot be granted against running of the brick kiln. See: Subhash Satya vs. Ram Narain, AIR 1994 All 120 (LB).
- 40. Eviction of tenant or lessee by landlord or lessor:** Where plaintiff was a lessee holding over and was in possession of the property for long and the defendant lessor sought to evict the lessee forcibly after termination of the lease, it has been held by the Allahabad High Court that the plaintiff could be granted temporary injunction restraining the defendant from evicting the plaintiff otherwise than in due course of law. See: Bhola Nath vs. Maharaj Raja Saheb, Bundi State, AIR 1984 All 60.
- 40.1 Alteration/damage to building by tenant & injunction:** If the tenant causes any damage, alters materially, demolishes or destroys any portion of the tenement, landlord cannot seek injunction against the tenant as the landlord has got an alternative remedy against the tenant u/s 41(h) of the Specific Relief Act, 1963 read with Order 39, rule 2, sub-rule 2, U.P. Amendment, proviso, clause (a) CPC for the eviction of the tenant on aforesaid grounds. See: Man Singh vs. Smt. Ganga Devi, 1982 All.L.J. 634 (All).
- 40.2 Public premises & injunction against eviction therefrom:** A building belonging to Govt. is a public premise u/s 2 of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 and a retired Govt. Servant



being an unauthorized occupant, cannot seek injunction against his eviction. See: State of U.P. vs. Rooplal Sharma, 1997 (29) ALR 373 (SC).

- 42. Trademark & injunction:** In case of use of a trade-name with deceptive similarity under the provisions of Trade Marks Act, 1999 if once a case of passing off is made out, the general practice to grant a prompt ex-parte temporary injunction restraining the use of deceptive or identical trade-name followed by appointment of a local commissioner has been held by the Supreme Court as proper. See: Luxmi Kant V. Patel vs. Chetanbhat Shah, 2002 (46) ALR 324 (SC).
- 42.1 Trademark & injunction:** Where there was common field of activity between the two parties in respect of goods and trademarks sought to be used by them were also identical and both the parties had applied for registration of their respected trade u/s. 21(3) of the Trade and Merchandise Marks Act, 1958, it has been held by the Supreme Court that under the facts of the case grant of interim injunction in favour of one of the parties was not proper. See: Uniply Industries Ltd. vs. Unicorn Plywood Pvt. Ltd., AIR 2001 SC 2083.
- 42.2 Publication of article:** In the case noted below, publication of an article in the English news paper Indian Express was restrained by the lower court. The Supreme Court while discontinuing the injunction order restraining publication of the article held that continuation of injunction would amount to interference with the freedom of press in the form of preventive injunction and must therefore be based on reasonable grounds for the sole purpose of keeping the administration of justice unimpaired. The article was allowed to be published. See: Reliance Petrochemicals Ltd Vs. Proprietors of Indian Express News Paper Bombay Pvt. Ltd., AIR 1989SC 190.
- 42.3 Publication of clip on news channel:** Court has to be circumspect in granting interlocutory injunction and imposing a prior restraint on publication or airing of the views. There should be a balance between the fundamental right to free speech and expression and fundamental right to equality and fair treatment for every segment of citizens. See: Firoz Iqbal Khan Vs Union of India, (2021) 2 SCC 596
- 43. UPZA & LR Act, 1950 and UP Land Revenue Act, 1901 have been repealed by the Uttar Pradesh Revenue Code, 2006 (UP Act No. 8 of 2012):** The UPZA & LR Act, 1950 and the UP Land Revenue Act, 1901 and 30 other Acts relating to the lands and land revenue etc. in UP have now been repealed by "The Uttar Pradesh Revenue Code, 2006" (UP Act No. 8 of 2012) = उत्तर प्रदेश राजस्व संहिता, 2006.

- 43.1 Uttar Pradesh Revenue Code, 2006 has come into force w.e.f. 12.12.2012:** As per Section 1(3) of "The Uttar Pradesh Revenue Code, 2006", the said Code shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different areas or for different provisions of this Code. The Uttar Pradesh Revenue Code, 2006 has been assented to by the President of India on 29.11.2012 under Article 201 of the Constitution. "The Uttar Pradesh Revenue Code, 2006" has come into force vide UP Government's Notification No. -1044/79-V-1-12-1(ka)33/06, Lucknow : dated December 12, 2012.
- 43.2 Section 229-B, 229-D, 331 of the UPZA & LR Act, 1950 and Power of Civil Court to Grant Injunction:** The UPZA & LR Act, 1950 and the UP Land Revenue Act, 1901 and 30 other Acts relating to the lands and land revenue etc. in UP have now been repealed by "The Uttar Pradesh Revenue Code, 2006" (UP Act No. 8 of 2012) = उत्तर प्रदेश राजस्व संहिता, 2006.
- 43.3 No injunction to plaintiff if his name is not recorded in the revenue records over the agricultural land as its tenure holder:** If the name of the plaintiff is not recorded as tenure holder of the agricultural land in the revenue records and question of declaration of title is involved, the jurisdiction of the civil court to entertain injunction suit and grant interim injunction would be barred u/s 331 of the U.P. Zamindari Abolition & Land Reforms Act, 1951 as the civil court cannot direct for the expunction or correction of the entries in revenue records and the same can be done only by the revenue courts. The remedy of the plaintiff in respect of the agricultural land under such facts and circumstances would be a suit for declaration of title before the revenue court **u/s 229-B of the UPZA & LR Act, 1951** and interim injunction can also be granted by the revenue court **u/s. 229-D** of the that Act. But where the name of the plaintiff is recorded in the revenue records as tenure holder of the agricultural land and no question of declaration of title is involved, the plaintiff can institute a suit in civil court for injunction against the defendant for restraining him from transferring the land, interfering with the possession of the plaintiff or demolishing any constructions etc. on such land or cutting trees etc. standing thereon. See:
- (i) Kamla Shankar vs. IIIrd ADJ, Mirzapur, 1998(89) R.D. 484 (All)
  - (ii) Magan Lal Chaturvedi vs. District Judge, Mathura, 1998 ALJ 2323 (All)
  - (iii) Deokinandan vs. Surajpal, 1996 ALJ 144 (SC)
  - (iv) Tej Bhan Singh vs. II ADJ, Jaunpur, 1995 ALJ 109 (All)
  - (v) Surya Narain Pandey vs. Addl. Civil Judge, Gyanpur, 1995 R.D. (H) 50 (All)

- (vi) Jyoti Ram vs. District Judge, Saharanpur, 1995 RD 99 (All)
- (vii) Tej Bhan Singh vs. IX ADJ, Jaunpur, 1994 R.D. 476 (All)
- (viii) Indra Pal vs. Jagannath, 1993 ALJ 235 (All)
- (ix) Bhagwat Prasad vs. Jitendra Narain, 1991 ALJ 971 (All)
- (x) Chandra Deo Pathak vs. Swami Nath Pathak, 1987 R.D. 51 (All)
- (xi) Vijai Singh vs. 2<sup>nd</sup> ADJ, Bulandshahr, 1982 ALJ 725 (All)
- (xii) 1980 R.D. 32 (Summary of Cases-43) (All—L.B.)
- (xiii) Jai Singh vs. Hanumant Singh, 1979 ALJ 645 (All)
- (xiv) Kishori Lal vs. Shambhoo Nath, 1978 ALJ 1273 (All)
- (xv) Parsottam vs. Narottam, 1970 ALJ 505 (All—D.B.)

**44. Cantonment Act, 1924 & injunction:** Injunction cannot be granted to protect any encroachment on any street or structure projecting into a drain belonging to cantonment board otherwise the drains, streets and roads may soon disappear. Injunction cannot be granted against the notice issued by the cantonment board u/s 254(2) of the Cantonment Act, 1924 for demolition of any unauthorized construction etc. See:

- (i) Atul Kumar Jain vs. Cantonment Board, Meerut, AIR 2007 (NOC) 1499 (All)
- (ii) Cantonment Board, Meerut vs. Narain Dass, AIR 1970 SC 105

**45. Share Certificates & Injunction:** The company recognizes no person except one whose name is on the register of members, upon whom alone calls for unpaid capital can be made and to whom only the dividend declared by the company is legally payable. Of course, between the transferor and the transferee, certain equities arise even on the execution and handing over of a blank transfer, and among these equities is the right of the transferee to claim the dividend declared and paid to the transferor who is treated as a trustee on behalf of the transferee. These equities, however, do not touch the company, and no claim by the transferee whose name is not in the register of members can be made against the company, if the transferor retains the money in his own hands and fails to pay it to him. The right of a transferee is only to call upon the company to register his name and no more. No rights arise till such registration takes place the completion of the transaction by having the name entered in the register of members relates it back to the time when the transfer was first made. So far as the question of rectification is concerned, it is the company court alone which would have jurisdiction. But issues regarding title or ownership etc. of the disputed shares will be decided by civil court only. Power to refuse to register transfer of shares, without assigning any reasons, or in the directors' absolute and uncontrolled discretion, is often found in the Articles of Association of a company. A person aggrieved by the refusal to register transfer of shares has, since the

enactment of the Companies Act, 1956, two remedies for seeking relief under the Companies Act; **(1)** to apply to the court for rectification of the register u/s. 155 of the Companies Act, 1956, and **(2)** to appeal against the resolution refusing to register the transfers u/s. 111 of the Companies Act, 1956. Interpreting the provisions of Sec. 155 & 446 of the Companies Act, 1956, it has been held by the Supreme Court (in AIR 1998 SC 3153) that the jurisdiction of the company court u/s. 155 of the Companies Act, 1956 is summary in nature and the civil courts jurisdiction regarding rectification of register of members is impliedly barred. See:

- (i) Surendra Prakash Goyal vs. M/s. Goyal Industries Pvt. Ltd., 1980 Tax L.R. 2007 (All)
- (ii) M/s. A.S. Corporation (P) Ltd. vs. M/s. M.P. Containers Pvt. Ltd., AIR 1998 SC 3153
- (iii) Life Insurance Corporation of India vs. Escorts Ltd. & others, AIR 1986 SC 1370
- (iv) Harinagar Sugar Mills Ltd. vs. Shyam Sunder Jhunjunwala, AIR 1961 SC 1669
- (v) M/s. Howrah Trading Co. Ltd. vs. Commissioner of Income Tax, Central, Calcutta, AIR 1959 SC 775

**46. Scope of Order 39, rule 2-A CPC:** In case of breach of temporary injunction, court has power either to order detention of disobeying party or attach his property. Both steps can be resorted to or one of them alone need be chosen by court depending on facts in each case. See: Samee Khan vs. Bindu Khan, AIR 1998 SC 2765.

**46.1 Requisites to be proved under Order 39, rule 2-A CPC for holding the contemnor guilty:** In order to hold the defendant/contemnor liable under Order 39, rule 2-A CPC, the following factors must be proved by the plaintiff:

- (i) That there was some injunction order passed by the Court.
- (ii) That the injunction order was conveyed to or served on the defendant/contemnor.
- (iii) That the defendant/contemnor had time and means to obey the order.
- (iv) That the disobedience or breach was deliberate and willful.

**46.2 Violation of injunction must be proved to be willful to entail punishment under Order 39, rule 2-A CPC:** Violation of order of injunction, interim or final, is serious matter. But unless there is clear evidence showing that the party willfully violated the Court order, he cannot be punished under Order 39, rule 2-A CPC or under Order 21, rule 32(5) CPC. Allegation of breach of injunction is in the nature of criminal liability and therefore has to be proved

to the satisfaction of the court that the disobedience was not mere a disobedience but a willful disobedience. See:

- (i) Ramasamy Vs. Venkatachalapathi, (2019) 3 SCC 544
- (ii) U.C. Surendranath vs. Mambally Bakery, AIR 2019 SC 3799.

**46.3 Liability for breach of temporary injunction when passed without jurisdiction:** A contemnor of breach of temporary injunction is liable to be punished under Order 39, rule 2-A CPC even if the suit was not maintainable and the interim injunction was passed without jurisdiction by the court or when ultimately the suit was dismissed as not maintainable for want of jurisdiction. See: Tayabhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd., (1997) 3 SCC 443.

**46.4 Contemnor of interim injunction can be punished under Order 39, rule 2-A CPC and not under the Contempt of Courts Act, 1971:** Where an injunction under Order 39, Rules 1 and 2 of the CPC is granted by a subordinate Court, High Court cannot punish the contemnor. It is considered a civil contempt punishable under O. 39, R. 2-A of the Code. It is outside the purview of Section 2(b) of the Contempt of Courts Act, 1971 since the scope of contempt of Court as contemplated under Order 39, R. 2-A(1) of CPC is different and is narrower than the scope of civil contempt within the meaning of Section 2(b) of the said Act, 1971. The provisions under Order. 39, R. 2-A of CPC provides an elaborate and exhaustive provision for dealing with breach of injunction order which is a serious matter since the Civil Court is empowered to order to take away even the liberty of an individual by detention of the person in a civil prison who has violated the order. So the power is penal in nature and the burden is heavy on the person who alleges disobedience to prove the ingredients of the offence beyond reasonable doubt since there has to be a clear proof that the order so ordered was clear, distinct, unambiguous and with full knowledge of the contemnor. See:

- (i) Mgan Lal vs. Sajid Ali Khan, AIR 2019 (NOC) 567 (Allahabad).
- (ii) AIR 2009 SC 2330.
- (iii) AIR 1981 All 309.
- (iv) Tapan Pal Vs. Pronab Pal, AIR 2019 Calcutta 139
- (v) AIR 1982 Karnataka 182

**46.5 Restoration of status quo ante:** Where the defendant had demolished the construction despite interim injunction issued by the court, it has been held that the court can order for restoration of status quo ante. See: Satya Prakash vs. Ist ADJ, Etawah, AIR 2002 All 198.

**46.6 Liability of state for breach of temporary injunction:** Officers of the state breaching or disobeying the temporary injunction issued by court are liable to be punished under Order 39, rule 2-A CPC. See: State of Bihar vs. Rani Sonabati Kumari, AIR 1961 SC 221 (Five-Judge Bench).

**46.7 Interim orders must be enforced:** Interim orders of courts are an integral element of judicial review. Interim directions issued on the basis of the prima facie findings in a case are temporary arrangements till the matter is finally decided. Interim orders ensure that the cause which is being agitated does not become infructuous before the final hearing. The power of judicial review is not only about the writs issued by superior courts or the striking down of governmental action. Entrustment of judicial review is accompanied by a duty to ensure that the judicial orders are complied with. Unless the orders are enforced, citizens will lose faith in the efficacy of judicial review and in the legal system that the faith of the citizens in the constitutional courts of the country be maintained. See: K.S. Puttaswamy Vs. Union of India, (2019) 1 SCC 1 (Five - Judge Bench)(Para ZU).

**46.8 Police aid for implementing temporary injunction & duty of court:** Once the court is satisfied that interim order passed by it is disobeyed, there could be no justification for the court not to initiate proceedings for enforcement of its order. Court cannot be merely a silent spectator while the order passed by it is being violated with impunity and the party is left on the mercy of the so called administration. It is not only an obligation but a solemn duty of the court to enforce its order by all means and to ensure that the interim order passed by it is complied with. To achieve the same, court should issue necessary instructions to the police if facts so warrant. See:

- (i) Board of Trustees of the Port of Mumbai Vs. Nikhil N. Gupta, (2015) 10 SCC 139.
- (ii) Sree Ram vs. State Of U.P. 2011 (2) ALJ 187(All) (DB)
- (iii) Smt. Jagannathiya vs. State of U.P., 2006 (64) ALR 330 (All) (DB)

**Note:** In the case of Smt. Jagannathiya, noted above, the Division Bench of the Allahabad High Court directed the civil court, Kaushambi to issue necessary orders to the **Superintendent of Police**, Kaushambi to take all measures to ensure compliance of the interim order passed by it at the earliest. The following rulings have been relied upon by the Division Bench in the case of Smt. Jagannathiya

- (i) Rameshwarlal vs. Municipal Council, Tonk, (1996) 6 SCC 100
- (ii) K.L. Viramani vs. III ADJ, 1992 (20) ALR 1065 (All)
- (iii) State of Bihar vs. Rani Sonabati Kumari, AIR 1961 SC 221
- (iv) Kochira Krishnan vs. Joseph Desouza, AIR 1986 Kerala 63
- (v) Sita Ram vs. Ganesh Das, AIR 1973 All 449

(vi) Samee Khan vs. Bindu Khan, AIR 1998 SC 2765

**46.9 Order 39, rule 2-A CPC & Contempt of Courts Act, 1971: Scope and applicability:** In case of disobedience of interim injunction orders, it has been held by the Division Bench of the Allahabad High Court that the provision of O. 39, Rule 2-A CPC prevails over the provisions of Contempt of Courts Act, 1971. See:

- (i) Smt. Jagannathiya vs. State of U.P., 2006 (64) ALR 330 (All) (DB)
- (ii) Dr. Alka Jaiswal Vs Fr. I. Farnandes, 1986 ALJ 133(All)
- (iii) Anis Ahmad Khan Vs. State of UP, 1985 ALJ 30 (All)

**46.10 Contempt of Court Act, 1971 not to apply when specific provisions for the same are available in CPC:** Normally, the general provisions made under the Contempt of Courts Act are not invoked by the High Courts for forcing a party to obey orders passed by its subordinate courts for the simple reason that there are provisions contained in Code of Civil Procedure, 1908 to get executed its orders and decrees. It is settled principle of law that where there are special law and general law, the provisions of special law would prevail over general law. As such, in normal circumstances a decree holder cannot take recourse of Contempt of Court Act else it is sure to throw open a floodgate of litigation under contempt jurisdiction. It is not the object of the Contempt of Courts Act to make decree holders rush to the High Courts simply for the reason that the decree passed by the subordinate court is not obeyed. See : E. Bapanaiah Vs. K. S. Raju, 2015 CrLJ 567 (SC).

**46.11 Contempt of Courts Act, 1971 applies to breach of injunction despite the remedy under order 39, rule 2-A CPC:** Section 22 of Contempt of Courts Act, 1971 provides that right to proceed under the said Act is an additional right. Besides, power of High Court in respect of contempt stems not only from Contempt of Courts Act, 1971 but also from Article 215 of the Constitution of India. The said power under Article 215 cannot be abridged or abrogated or cut down or controlled or limited by any statute or rules or provision of CPC. Further, in view of Section 122 CPC, in case of any conflict between provisions of CPC and rules framed by High Court, the latter will prevail. Provisions of Order 39, rule 2-A CPC cannot override said rules. Dismissal of contempt petition by High Court on ground that in view of specific remedy being available under Order 39, rule 2-A CPC to meet the contingency of breach of injunction orders, person complaining of breach of injunction order should not be allowed to take up proceedings under Contempt of Courts Act, 1971, was not proper. A party committing breach of any order of court, whether interlocutory or final, is liable to be proceeded

against in respect of Contempt of Court. See : Welset Engineers & Another Vs. Vikas Auto Industries & Others, (2015) 10 SCC 609.

**46.12 Appeal against an order passed under Order 39, rule 2-A CPC:** An order passed by trial court u/o 39, r. 2-A CPC is appellable u/o 43, rule 1 (r) CPC. Such an appeal must be decided by the appellate court on its merits. See: G. Kamala Rao vs. K. Jawahar Reddy, (2000) 9 SCC 231.

**46.13 Tribunals have power to punish for contempt:** Tribunals have power to punish for contempt of Court. See: Madras Bar Association Vs. Union of India, (2015) 8 SCC 583 (Five-Judge Bench).

**46.14 Labour Court's decision not to be treated as Precedent:** Labour Court is not a Court of record hence creates no precedents. See: Rahimuddin & Others Vs. Gossini Fashions Ltd., 2012 (2) SLJ 487 (Delhi High Court).

**47. Temporary injunction against exhibition of T.V. serial held improper:** Where interim injunction was granted by court against the exhibition of certain episodes of a T.V. serial entitled "Honi Anthoni", the Supreme Court interpreting the provisions of Order 39, r. 1 & 2 CPC, Article 19(1)(a) of the Constitution and the provisions of Cinematograph Act, 1952, has held that as no prima facie evidence was produced to show that the exhibition of the serial was prejudicial to certain community or likely to cause any grave prejudice to public generally or endanger public morality and therefore the grant of interim injunction against the exhibition of the serial was held improper. See: Odyssey Communications Pvt. Ltd. vs. Lokvidayan Sabnghatana, AIR 1988 SC 1642

**48. Election and Temporary Injunction:** (See-- Order 39, rule 2, sub-rule 2, U.P. Amendment, Proviso, clause (e) CPC): Once the electoral process has commenced, there can be no judicial interference by courts into it and no interim relief can be granted in relation thereto. Order 39, rule 2, sub-rule 2, U.P. Amendment, Proviso, clause (e) CPC also bars grant of interim injunction restraining any election. See:

(i) Swami Prakasananda vs. State of Kerala, 2006 (65) ALR 617 (SC)

(ii) Buddula Krishnaiah vs. State Election Commissioner A.P., AIR 1996 SC 1595

(iii) Mohinder Singh Gill vs. Chief Election Commissioner, AIR 1978 SC 851

**48.1 Courts not to interfere in the election process during the mid of the elections:** Once an election process has been set in motion, though the High



Court may entertain or may have already entertained a writ petition under Article 226 of the Constitution, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh particularly when the election has already been held in which the voters were allegedly prevented to exercise their franchise as that dispute is covered by an election dispute and remedy is thus available at law for redressal. In the circumstances, the order passed by the High Court giving direction not to declare the result of the election or to conduct fresh poll for 20 persons, though the writ petition is maintainable, would be illegal. The High Court, pending writ petition, would not be justified in issuing direction to stall the election process. See :

- (i) Boddula Krishnaiah Vs. State Election Commissioner, A.P., AIR 1996 SC 1595 (Three-Judge Bench) (paras 11 & 12)
- (ii) Lakshmi Charan Sen Vs. A. K. M. Hassan Uzzaman, AIR 1985 SC 1233 (Five-Judge Bench)(para 28)
- (iii) State of U. P. Vs. Pradhan Sangh Kshettra samiti, (1995) Supp (2) SCC 305 (at page 331)

**49. Grant of interim injunction during stay of proceedings of suit:** An interlocutory application or interim injunction application can be entertained and interim injunction can be granted under Order 39, rules 1 & 2 CPC or u/s 151 CPC during the period of stay (including stay of suit u/s 10 CPC) of suit if it does not affect the final decision of the suit on merits. See:

- (i) Rameshwar vs. V ADJ, Basti, 1999 ALJ 22 (All)
- (ii) Indian Bank vs. Maharashtra State Co-operative Marketing Federation Ltd., AIR 1998 SC 1952
- (iii) Radha Rani Cold Storage Pvt. Ltd. Vs. UP State Cold Storage Tribunal & Others, 2009 (27) LCD 1391(All...D.B.)
- (iv) Mool Chand Yadav Vs. Raza Buland Sugar Company Limited, Rampur, 1982 (3) SCC 484
- (v) Daroga & Another Vs. Commissioner, Gorakhpur & Others, 1996 (14) LCD 506 (All) (D.B.)

**49.1 Grant of interim injunction u/s 151 CPC during stay of proceedings of suit:** U/s 151 CPC, civil court can in exercise of its inherent powers grant interim injunction even during the period of stay of the proceedings by the superior court. See: Breach Candy Swimming Bath Trust Vs. Dipesh Mehta, AIR 2016 (NOC) 167 (Bombay).

**50. Religious matters and injunction:** Where a group of Muslims was prevented by other Muslims from loudly uttering “Aameen” in mosque, it has been held by the Allahabad High Court that a Musalman is entitled to enter a

mosque dedicated to God and in the prayers utter the word "Aameen" loudly but not with a malafide intention to disturb the peace of the congregation and grant of injunction in such religious matters has been held proper. See: Syed Farzand Ali vs. Nasir Beg, AIR 1980 All 342

**50.1 Worship of deity and interim injunction:** Where a suit was filed to restrain defendants from using land belonging to a deity by plaintiff as representing the worshippers of the deity in the temple under Order 1, rule 8 CPC after obtaining permission from court which was given after notice and contest, the suit would be maintainable at the instance of the plaintiff when the defendants failed to prove that the plaintiffs were Arya Samajists, i.e., non-believers in worship of deity and the plaintiffs were descendants of persons who had constructed the temple for the idol. Case law discussed. See: Vidya Sagar Sharma Vs. Anand Swarup Dublish, AIR 1981 All 106

**50.2 Injunction can be granted to perform "pooja" in a temple:** Where the dispute in a civil suit was in relation to a temple and the plaintiff had sought interim injunction against the defendant restraining him from interfering in the plaintiff's right to perform pooja in the temple, it has been held that if the plaintiff was the true owner of the property as claimed by him, he can claim injunction against the defendant even if he was not performing pooja at the relevant time. See: Bhairab Dutt Vs. Bala Dutt Bhatt, 2011(114) RD 199(Uttarakhand).

**50.3 Mahantship though a legal right but not heritable like ordinary property:** In the conception of Mahantship, as in shebaitship, both the elements of office and property of duties and personal interest are blended together and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect to endowed properties and these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal right. However, the Mahantship is not heritable like ordinary property. See : The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282 (Seven-Judge Bench)(para 11).

**50.4 Civil and revenue courts have no jurisdiction in respect of waqf property:** In view of the provisions of the Waqf Act, 1995 as amended by Act of 2013, Civil and Revenue Courts have no jurisdiction to decide suits in respect of the waqf property. See: Lal Shah Baba Dargah Trust Vs. Magnum Developers, AIR 2016 SC 381.

**50.5 Civil court has jurisdiction to decide the suit if the plaintiff has not claimed any personal right in the waqf property:** In the case noted below, the issue before the court was whether the disputed properties were properties of the Dargah or not and not whether the properties were the waqf properties or not. The Supreme Court held that as the plaintiffs were not claiming any personal right in the disputed properties but only rights of management over the properties of the Dargah, the civil court had jurisdiction to decide the suit. See: *Sopanrao vs. Syed Mehmood*, AIR 2019 SC 3113(Three-Judge Bench).

**51. Invoking Bank Guarantee and Injunction:** Court cannot restrain from invoking bank guarantee given under a contract of supply of goods. See: *The State Trading Corporation of India Ltd. Vs. Jainsons Clothing Corporation*, AIR 1994 SC 2778.

**52. Anti-Suit Injunction:** Principles governing grant of injunction under Order 39, rules 1 & 2 CPC apply in relating to anti-suit injunctions also. It is well settled principle that by agreement the parties cannot confer jurisdiction, where none exists on a Court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign Court; indeed in such cases the English Courts do permit invoking their jurisdiction. Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a Foreign Court termed as a ‘neutral Court’ or ‘Court of choice’ creating exclusive or non-exclusive jurisdiction in it. See: *Modi Entertainment Network vs. W.S.G. Cricket Pte. Ltd.*, AIR 2003 SC 1177

**53. Restraining public servant from exercising his powers under law:** No injunction can be granted to restrain a public servant from exercising his powers for doing some act for which he is otherwise empowered by some law to do. See:

- (i) *Rajendra Kumar Singh vs. Munsif Kashipur Nainital*, 1997(15) LCD 552 (All)—Case of grant of permit under MV Act, 1988
- (ii) *Cotton Corporation of India Ltd. vs. United Industrial Bank Ltd.*, AIR 1983 SC 1272—Case of T.I. restraining institution of proceeding in court.

**54. Recovery of public dues and loans by financial institutions:** (*Order 39, rule 2, sub-rule 2, U.P. Amendment, proviso, clause (g) CPC*): No injunction can be granted to restrain recovery of public dues like **electric bill, telephone bill, taxes, land revenue, bank loans** or any other loans taken from financial institutions. See:

- (i) *Balram vs. State of U.P.*, 2002 (47) ALR 30 (All) (D.B.)
- (ii) *M/s Chandranand Packaging vs. U.P. Financial Corporation*, ALR 1996 (27) 173 (All) (*UPFC Loan*)

- (iii) Union of India vs. Shree Ganesh Steel Rolling Mills Ltd., 1996 (2) CCC 225 (SC) (*Revenue Dues*)
- (iv) Pawan Kumar Jain vs. I and I Corporation of U.P. Ltd., AIR 1998 All. 57 (*Dues of financial corporation*)
- (v) Mahesh Chandra vs. Zila Panchayat, Mainpuri, AIR 1997 All. 248 (*Arrears recoverable as land revenue*)
- (vi) U.P. State Industrial Development Corporation Ltd. vs. C.R. Newar, (1995) JCLR 27 All. (*Industrial Loan*)
- (vii) Guru Nanak Beverages and Comp. vs. D.M., Allahabad, AWC 1996 All. 653 (*Bank Loan*)
- (viii) Radha Krishna Bhatt vs. State of U.P., 1992 RD 1 (All.) (*Recovery of forest dues*)

**54.1 Disconnection of electricity and injunction:** Where interim prohibitory injunction was sought for by the plaintiff in a suit for injunction only for restraining the electricity board from effecting disconnection without seeking declaration of non-liability of dues, it has been held by the Allahabad High Court that the suit was not maintainable and injunction against disconnection of supply of electricity could not be granted. See:

- (i) M/s. Geeta Pump (P) Ltd. vs. District Judge, Saharanpur, AIR 2000 All 58
- (ii) M/s. Pilibhit Ispat (P) Ltd. vs. U.P. State Electricity Board, AIR 1996 All 329 (D.B.)
- (iii) Sir Shadi Lal Enterprises Ltd. vs. State of U.P., 1995 ALJ 1517 (All)(D.B.)
- (iv) Debi Dayal vs. U.P. State Electricity Board, 1988 Civil Law Journal 266 (All)

**Note:** Injunction against disconnection of supply of electricity cannot be granted in view of the provisions u/s 4 & 5 of the U.P. Government Electrical Under Taking (Dues Recovery) Act, 1958.

**54.2 Bar of Section 145 of Electricity Act, 2003 against grant of Temporary Injunction:** According to Section 145 of the Electricity Act, 2003, no civil court have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

- 55. Appeal against order granting interim injunction:** An appeal under Order 43, rule 1 (r) CPC lies against an order passed by court u/s 104 CPC r/w Order 39, rules 1 & 2, rule 2-A, rule 4 & rule 10 CPC. It cannot be contended that the power to pass interim ex-parte orders of injunction does not emanate from Order 39, rule 1. In fact, the said rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in rule 1 would be appealable as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the appellate Court or to approach the same Court which passed the ex-parte order for any relief. See: A. Venkatasubbiah Naidu vs. S. Chellappan, AIR 2000 SC 3032
- 55.1 Appeal does not lie against an order granting ex-parte temporary injunction u/s 151 CPC:** Appeal does not lie against an order granting ex-parte temporary injunction u/s 151 CPC. See: Zila Parishad, Budaun Vs. Brahma Rishi Sharma, AIR 1970 All 376 (Full Bench)
- 55.2 Appeal against an order passed under Order 39, rule 2-A CPC:** An order passed by trial court under Order 39, rule 2-A CPC is appealable under Order 43, rule 1 (r) CPC. Such an appeal must be decided by the appellate court on its merits. See: G. Kamala Rao vs. K. Jawahar Reddy, (2000) 9 SCC 231.
- 56. Revision u/s 115 CPC against issue of notice under Order 39, rule 3 CPC:** Revision u/s 115 CPC against issue of notice by court under Order 39, rule 3 CPC is not maintainable. See:
- (i) Lucknow Diocesan Trust Assn. vs. Sri B.C. Jain & others, 2006 (1) ARC 153 (All)
  - (ii) Col. Anil Kak (Retd.) vs. Municipal Corp., Indore, 2006 (1) ARC 39 (SC)
  - (iii) Bhagwati Pd. Lohar vs. State of U.P., 2005 (99) RD 333 (All)
  - (iv) Gayatri Devi vs. Shashi Pal Singh, 2005 (1) SCJ 637
  - (v) Yashwant Sakhalkar vs. Hirabat Kamat Mhamai, (2004)6 SCC 71
  - (vi) Suryadeo Rai vs. Ram Chander Rai, (2003) 6 SCC 675
  - (vii) Rajendra Singh vs. Sri Brij Mohan Agarwal, 2003(1) ARC 270 (All)
  - (viii) Shiv Shakti Co-operative Housing Society vs. Swaraj Developers, (2003) 6 SCC 659
  - (ix) Ravinder Kaur vs. Ashok Kumar, (2003) 8 SCC 289
  - (x) United India Insurance Co. Ltd. vs. Rajendra Singh, AIR 2000 SC 1165
  - (xi) Rajbir Singh vs. VII ADJ, Muzaffarnagar, 1998 RD 483 (All)
  - (xii) S.P. Chengal Varaya Naidu vs. Jagannath, AIR 1994 SC 853

**Note:** In compliance with the order of Hon'ble Allahabad High Court passed in writ petition no. 802 (M/s) of 2007, Lalit Mohan Srivastava vs. Distt. Judge, Ambedkar Nagar & others, C.L. No. 18/2007, dated 11.5.2007 and the C.L. No. 15/Admin 'G' 2006, dated 3.5.2006 in compliance with the directions issued in the case of **Bhagwati Pd. Lohar vs. State of U.P., 2005 (99) RD 333 (All)** circulated amongst the judicial officers of the State of U.P. directs that revision u/s. 115 CPC against issue of notice u/o 39, r. 1, 2, 3 CPC being interlocutory is not maintainable.

**57. Retrospective and prospective application of amended law:** Amendment in law during pendency of appeal giving right to party must be applied by court to give benefit of the amended law to the party: A change in law during pendency of appeal must be considered and appropriately applied. It is the duty of court, whether it is trying the original proceedings or hearing an appeal, to take notice of the change in law affecting the pending action and to give effect to the same. Mere severance of status by way of filing of a suit does not bring about the partition and till the date of the final decree. Thus, change in law, and change due to subsequent event, can be taken into consideration. In this case, Section 6 of the Hindu Succession Act, 1956 was amended wef 9.8.2005 giving equal rights to daughter as coparcener co-equal to sons from her birth. A preliminary decree was passed in the partition suit but before passing of the final decree, Section 6 of the Hindu Succession Act, 1956 was amended. Preliminary decree was challenged in appeal and during pendency of appeal, Section 6 of the said Act was amended. Supreme Court held that the final decree must have been passed in accordance with the amended Section 6 of the Hindu Succession Act, 1956. See: Prasanta Kumar Sahoo Vs Charulata Sahu, (2023) 9 SCC 641

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## अन्तरिम निषेधाज्ञा के नमूना आदेश Model Temporary Injunction Orders

<b>1.</b>	आदेश 39, नियम 3 सीपीसी के अन्तर्गत सिविल न्यायालय द्वारा पारित एकपक्षीय अन्तरिम व्यादेश का नमूना Ex parte ad interim injunction order under Order 39, rule 3 CPC
<b>2.</b>	निषेधाज्ञा प्रार्थना-पत्र पर एकपक्षीय अस्थायी व्यादेश जारी करने के बजाय प्रतिवादीगण को नोटिस जारी करना Issuing notice to defendants instead of passing ex parte ad interim injunction under Order 39, rule 3 CPC
<b>3.</b>	एकपक्षीय निषेधाज्ञा प्रार्थना पत्र पर आदेश जब मूलवाद स्थायी न्यायालय से अन्तरित होकर उसी दिन प्राप्त हुआ हो Ex parte ad interim injunction when suit has been received by transfer on its date of institution
<b>4.</b>	यथास्थिति बनाये रखने हेतु एकपक्षीय अस्थायी व्यादेश Ex parte temporary injunction to maintain status quo
<b>5.</b>	किरायेदार की बेदखली के विरुद्ध एकपक्षीय अस्थायी व्यादेश Ex parte ad interim injunction against forcible eviction of tenant
<b>6.</b>	जब एकपक्षीय अस्थायी व्यादेश पिछली तिथि अथवा तिथियों पर विस्तारित नहीं किया गया हो Order when ex parte ad interim injunction discontinued due to non-extension on previous date/ dates
<b>7.</b>	उभयपक्ष की सुनवाई के उपरान्त गुणदोष के आधार पर निषेधाज्ञा प्रार्थना पत्र का निस्तारण Disposal of Interim Injunction Application on merits after hearing both the parties

(1)

(आदेश 39, नियम 3 सीपीसी के अन्तर्गत सिविल न्यायालय द्वारा पारित  
एकपक्षीय अन्तरिम व्यादेश का नमूना)

न्यायालय अपर सिविल जज (जूनियर डिवीजन), कक्ष संख्या-28, इलाहाबाद

मूलवाद संख्या: 218/2020

राम प्रताप सिंह एवं अन्य .....वादीगण

प्रति

सुरेश प्रताप सिंह एवं अन्य.....प्रतिवादीगण

## आदेश

20.09.2020

वादीगण राम प्रताप सिंह आदि द्वारा वर्तमान मूलवाद स्थायी निषेधाज्ञा हेतु प्रस्तुत किया गया है। वादीगण ने आदेश 39, नियम 1 व 2 सीपीसी के अन्तर्गत प्रार्थनापत्र 6ग2 इस आशय का प्रस्तुत किया है कि न्यायालय प्रतिवादीगण के विरुद्ध एकपक्षीय अन्तरिम निषेधात्मक व्यादेश जारी करे। वादीगण के विद्वान अधिवक्ता को सुना तथा पत्रावली का अवलोकन किया।

वादपत्र तथा अन्तरिम व्यादेश प्रार्थनापत्र 6ग2 मय शपथपत्र 7ग2 में वादीगण का कथन है कि वादीगण विवादित भूमि खसरा संख्या: 108, क्षेत्रफल: 8 बिस्वा, स्थित ग्राम: फाफामऊ, जनपद: इलाहाबाद के भूमिधर, स्वामीगण व अध्यासीगण हैं तथा विवादित भूमि पर उनका नाम राजस्व अभिलेखों में भूमिधर के रूप में अद्यतन अंकित है। प्रतिवादीगण का विवादित भूमि में कोई अधिकार, अध्यासन व सम्बन्ध नहीं है। विवादित भूमि पर वादीगण ने पिछले लगभग 10 वर्षों से अपना ट्यूबवेल लगा रखा है तथा विवादित भूमि के उत्तर की ओर अपनी उपरोक्त भूमि के अन्दर ही किनारे पर पक्की नाली बनवा रखी है जिससे वादीगण अपने ट्यूबवेल का पानी अपने खेतों की सिंचाई के लिए ले जाते हैं। प्रतिवादीगण वादीगण की उपरोक्त भूमि में स्थित उक्त नाली को ध्वस्त करके उसके अन्तर्गत आने वाली वादी की भूमि को पास में ही स्थित अपने खेत खसरा संख्या: 140 में मिला लेना चाहते हैं और इसके लिए प्रतिवादीगण ने दिनांक 12.09.2020 को और उसके बाद से लगातार स्वयं तथा अपने मजदूरों के साथ वादीगण की उपरोक्त भूमि पर आकर प्रश्नगत नाली को ध्वस्त करने का प्रयास कर रहे हैं जिसे वादीगण ने अपने कतिपय ग्रामवासियों के सहयोग से विफल कर दिया परन्तु प्रतिवादीगण अभी भी उक्त नाली को ध्वस्त करके उसके अन्तर्गत आने वाली वादीगण की भूमि को अपने खेत में मिला लेने की धमकी दे रहे हैं जिसे निषिद्ध किए जाने हेतु वादीगण ने वर्तमान मूलवाद वास्ते



स्थायी निषेधात्मक व्यादेश योजित किया है। सूचीपत्र 10ग2 के माध्यम से वादीगण ने विवादित भूमि का अद्यतन खसरा व खतौनी कागज संख्या: 11ग2 व 12ग2 प्रस्तुत किया है।

वादीगण ने विवादित भूमि खसरा संख्या: 108 तथा उसमें उत्तर की ओर स्थित पानी की प्रश्नगत नाली पर अपने अध्यासन के समर्थन में अपना शपथपत्र 7ग2 प्रस्तुत किया है। विवादित भूमि पर अपने अध्यासन के समर्थन में वादीगण ने खसरा कागज संख्या: 11ग2 भी प्रस्तुत किया है। अतएव वादीगण के पक्ष में एकपक्षीय निषेधाज्ञा हेतु प्रथम दृष्टया केस विद्यमान है। प्रतिवादीगण द्वारा विवादित नाली ध्वस्त कर दिए जाने से वादीगण को न केवल अपूर्णनीय क्षति कारित होगी अपितु वर्तमान मूलवाद व निषेधाज्ञा प्रार्थनापत्र का उद्देश्य भी निष्फल हो जावेगा। उपरोक्त तथ्यों एवं परिस्थितियों में सुविधा का संतुलन भी वादीगण के पक्ष में है। अतएव अन्तरिम व्यादेश प्रार्थनापत्र 6ग2 के विरुद्ध आपत्ति आमंत्रित करते हुए प्रतिवादीगण को दिनांक 27.09.2020 के लिए आदेश वाहक के माध्यम से नोटिस वास्ते आपत्ति तथा 6ग2 की सुनवाई के लिये जारी है। इस बीच नियत तिथि 27.09.2020 तक प्रश्नगत नाली को ध्वस्त करने से प्रतिवादीगण को निषिद्ध किया जाता है। वादीगण आदेश 39, नियम 3 सीपीसी के प्रावधानों का अनुपालन करना अविलम्ब सुनिश्चित करें। पत्रावली नियत तिथि 27.09.2020 को वास्ते आपत्ति व सुनवाई 6ग2 प्रस्तुत हो।

अपर सिविल जज (जूनियर डिवीजन)  
कक्ष संख्या-28, इलाहाबाद

(1)

**(Ex- parte ad interim injunction order under Order 39, rule 3 CPC)**

OS No. 218/2020

Ram Pratap Singh & Others.....Plaintiffs

**Versus**

Suresh Pratap Singh & Others .....Defendants

**ORDER**

**20.09.2020**

Plaintiffs Ram Pratap Singh and others have instituted the present suit seeking permanent injunction and have moved application 6C2 under order 39, rules 1 and 2 CPC seeking ex parte ad interim injunction against the defendants. Heard the learned counsel for the plaintiffs and perused the record.

As stated in the plaint, interim injunction application 6C2 and the accompanying affidavit 7C2, plaintiffs are the Bhumidhars and owners in possession of the disputed agricultural land bearing khasra No. 108, measuring 8 viswas, situate in village: Phaphamau, district: Allahabad and their names are recorded as such in the revenue records. Defendants have no right or possession over the land in dispute. The plaintiffs have installed a tube well on their said land for the last ten years and have got a drainage constructed towards north of their said land for irrigating their fields. Defendants are threatening to dismantle the aforesaid drainage of the plaintiffs and annex its land to their adjoining khasra No. 140 and have ever since 12.09.2020 attempting to dismantle the said drainage with the help of their labourers. The plaintiffs have somehow managed not to allow the defendants to succeed in their said attempt but they are throughout threatening to dismantle the aforesaid drainage and annex its land to their adjoining field. The plaintiffs have filed up-to-date khasra and khatauni paper numbers 11C2 and 12C2 of the disputed land vide list 10C2 and affidavit 7C2 in support of their aforesaid statements which go to show a prima facie case in favour of the plaintiffs. In case an ex parte ad interim injunction is not granted, then not only the very object of the suit and the injunction application will stand frustrated but irreparable injury would also be caused to the plaintiffs. In view of the above facts and circumstances of the case, balance of convenience is also found to be in favour of the plaintiffs. So issue notice to the defendants inviting objections by fixing 27.09.2020 for hearing on 6C2. The defendants are meanwhile restrained up to 27.09.2020 from dismantling the said drainage and annexing the plaintiffs' land to their adjoining field. Plaintiffs are directed to comply with the provisions of the Proviso to rule 3 of Order 39 CPC forthwith.

Addl. Civil Judge (Junior Division)  
Court No. 28, Allahabad

(2)

**(निषेधाज्ञा प्रार्थना-पत्र पर एकपक्षीय अस्थायी व्यादेश जारी करने के बजाय प्रतिवादीगण को नोटिस जारी करना)**

**20.09.2020:** वादी द्वारा वर्तमान मूलवाद प्रयागराज विकास प्राधिकरण, प्रयागराज एवं अन्य के विरुद्ध स्थायी निषेधात्मक व्यादेश के लिए योजित किया गया है। वादी ने आदेश 39, नियम 3 सीपीसी के अंतर्गत प्रार्थना-पत्र 9ग2 प्रस्तुत करके प्रतिवादीगण के विरुद्ध एकपक्षीय अस्थायी व्यादेश जारी करने का अनुरोध किया है। वादी के अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

वाद-पत्र, निषेधाज्ञा प्रार्थना-पत्र 6ग2 एवं उसके समर्थन में प्रस्तुत किये गये शपथ-पत्र 7ग2 में वादी का कथन है कि वादी ने विवादित भूमि गाटा सं0-26, क्षेत्रफल 200 वर्गमीटर, स्थित कस्बा: झूंसी, तहसील: सदर, जनपद: प्रयागराज दिनांक 16.07.2017 को पंजीकृत विक्रय पत्र के माध्यम से उसके पूर्व स्वामी रमेश चन्द्र से क्रय किया था और तब से वादी उक्त भूमि पर उसके एकमात्र स्वामी के रूप में काबिज है। वादी ने जब पिछले दिनों अपनी उक्त भूमि पर मकान बनाने के लिए नींव की खुदाई करवाना प्रारम्भ किया तो प्रयागराज विकास प्राधिकरण, प्रयागराज के अधिकारियों और कर्मचारियों ने मौके पर आकर वादी द्वारा करवाये जा रहे नींव की खुदाई के कार्य को रूकवा दिया और तब से वादी को नींव की खुदाई और निर्माण कार्य नहीं करने दे रहे हैं जबकि प्रतिवादीगण का उक्त भूमि में कोई विधिक अधिकार अथवा स्वामित्व नहीं है। वादी ने प्रार्थना-पत्र 9ग2 प्रस्तुत करके अनुरोध किया है कि प्रतिवादीगण के विरुद्ध एकपक्षीय रूप से अस्थायी निषेधाज्ञा जारी करते हुए उन्हें निषिद्ध किया जावे कि प्रतिवादीगण वादी द्वारा उक्त भूमि में कराये जा रहे नींव की खुदाई तथा मकान निर्माण के कार्य में हस्तक्षेप नहीं करें। वादी ने सूची पत्र 8ग2 के माध्यम से उपरोक्त विक्रय पत्र की प्रमाणित प्रति प्रस्तुत की है जिससे स्पष्ट होता है कि वादी ने उक्त भूमि उसके पूर्व स्वामी रमेश चन्द्र से क्रय किया था। वादी की ओर से इस आशय का कोई प्रमाण प्रस्तुत नहीं किया गया है जिससे स्पष्ट होता हो कि वादी ने उक्त भूमि पर मकान बनाने के लिए नींव की खुदाई तथा निर्माण कार्य प्रारम्भ करने से पूर्व प्रयागराज विकास प्राधिकरण, प्रयागराज से नक्शा पास करवाया हो अथवा उससे अनुमति प्राप्त की हो। वाद के तथ्यों व परिस्थितियों में वादी के पक्ष में प्रथम दृष्टया केस तथा सुविधा का संतुलन जैसे तथ्य विद्यमान नहीं हैं और एकपक्षीय रूप से अस्थायी निषेधाज्ञा जारी नहीं किये जाने की दशा में वादी को अपूर्णनीय क्षति कारित होने की भी संभावना नहीं है। उपरोक्त तथ्यों व परिस्थितियों में प्रतिवादीगण को आपत्ति व सुनवाई का अवसर दिये बिना एकपक्षीय रूप से वादी के पक्ष में अस्थायी निषेधाज्ञा पारित किये जाने हेतु संतोषप्रद आधार उपलब्ध नहीं हैं। अतएव दिनांक 26.09.2020 की तिथि निषेधाज्ञा प्रार्थना पत्र 6ग2 के विरुद्ध प्रतिवादीगण की आपत्ति एवं सुनवाई हेतु नियत करते हुए प्रतिवादीगण को आदेश वाहक के माध्यम से नोटिसें जारी हों। वादी आवश्यक पैरवी अविलम्ब पूरी करे। प्रार्थना पत्र 9ग2 तदनुसार निस्तारित किया जाता है।

(2)

**(Issuing notice to defendants instead of passing ex- parte ad interim injunction under Order 39, rule 3 CPC )**

20.09.2020: Plaintiff has instituted the present suit for permanent prohibitory injunction against the defendants. By means of application 9C2 moved under Order 39, rule 3 CPC, plaintiff has sought for ex parte ad interim injunction against the defendants. Heard the learned counsel for the plaintiff and perused the record.

As stated by the plaintiff in the plaint, temporary injunction application 6C2 and the accompanying affidavit 7C2, plaintiff had purchased the disputed plot bearing Gata No. 26, measuring 200 sq. meters, situated in Town: Jhunsi, Tehsil: Sadar, District: Prayagraj from its erstwhile owner Ramesh Chandra by means of registered sale deed dated 16.07.2017 and since then plaintiff alone is in possession of the said land as its sole owner. A few days back, when the plaintiff was digging in the said land for laying foundation and construction of his house, officers of the Prayagraj Development Authority, Prayagraj appeared on the spot and stopped the digging of foundation and since then they are not allowing the plaintiff to carry out his said work of foundation and construction of his house. Plaintiff has prayed for issuing ex parte ad interim injunction against the defendants restraining them from interfering in the digging of the foundation for construction of his house on his aforesaid land. Plaintiff has filed a certified copy of the aforesaid sale deed vide list 8C2 which reveals that he had purchased the said land from its previous owner Ramesh Chandra. Plaintiff has not produced any document to show that he had got the map sanctioned or obtained the permission of the Prayagraj Development Authority, Prayagraj before starting digging of foundation for construction of his house on the said land. No prima facie case and balance of convenience are thus found to be existing in favour of the plaintiff nor any irreparable injury is likely to be caused to the plaintiff for want of an ex parte ad interim injunction. In the facts and circumstances as above, there are no satisfactory grounds for granting ex parte ad interim injunction in favour of the plaintiff without providing opportunity of objections and hearing to the defendants against the injunction application 6C2. So issue notices to the defendants fixing 26.09.2020 for objections and hearing on the injunction application 6C2. Plaintiff is directed to take necessary steps forthwith. Application 9C2 moved by plaintiff under Order 39, rule 3 CPC is disposed of accordingly.

Addl. Civil Judge (Junior Division)  
Court No. 28, Allahabad

(3)

(एकपक्षीय निषेधाज्ञा प्रार्थना पत्र पर आदेश जब मूलवाद स्थायी न्यायालय से अन्तरित होकर उसी दिन प्राप्त हुआ हो)

**08.09.2020:** मूलवाद की पत्रावली न्यायालय सिविल जज (जूनियर डिवीजन), पश्चिमी, इलाहाबाद से अन्तरित होकर आज इस न्यायालय में प्राप्त हुई है। वादी मय अधिवक्ता उपस्थित है। वादी की ओर से एकपक्षीय निषेधाज्ञा हेतु प्रार्थना पत्र 8ग2 प्रस्तुत किया गया है। सुना। पत्रावली 8ग2 पर आदेश के लिए दिनांक 09.09.2020 को प्रस्तुत हो।

अपर सिविल जज (जूनियर डिवीजन)  
कक्ष संख्या-28, इलाहाबाद

(3)

**Reserving order on ex-parte injunction application when suit has been received by transfer from parent court the same day**

**08.09.2020:** Record of the present original suit has been received today in this court by transfer from the court of the Civil Judge (Junior Division), West, Allahabad. Plaintiff is present with his counsel. Plaintiff has moved application 8C<sub>2</sub> seeking ex-parte ad interim injunction against the defendants who are yet not served. Heard the learned counsel for plaintiff on 8C<sub>2</sub>. Fix 09.09.2020 for order on 8C<sub>2</sub>.

Addl. Civil Judge (J.D.)  
Court No- 28, Allahabad

(4)

**(यथास्थिति बनाये रखने हेतु एकपक्षीय अस्थाई व्यादेश)**

न्यायालय अपर सिविल जज (जूनियर डिवीजन), कोर्ट संख्या- 28, इलाहाबाद  
मूलवाद संख्या- 218/2020

महावीरआदि.....वादीगण

प्रति

रमेश कुमार आदि ..... प्रतिवादीगण

12.09.2020 : वादीगण द्वारा वर्तमान मूलवाद प्रतिवादीगण के विरुद्ध स्थाई निषेधात्मक व्यादेश की डिक्री के लिए योजित किया गया है। वादीगण ने निषेधाज्ञा प्रार्थना पत्र 6ग<sub>2</sub> मय शपथपत्र 7ग<sub>2</sub> प्रस्तुत करके प्रतिवादीगण के विरुद्ध आदेश 39, नियम 3 सीपीसी के अन्तर्गत एकपक्षीय अस्थाई निषेधात्मक व्यादेश जारी करने का अनुरोध किया है। वादीगण के अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

वादपत्र, निषेधाज्ञा प्रार्थना पत्र 6ग<sub>2</sub> तथा उसके समर्थन में प्रस्तुत किये गये शपथपत्र 7ग<sub>2</sub> में वादीगण का कथन है कि वादीगण ग्राम: रामपुर, परगना व तहसील: चायल, जनपद: इलाहाबाद के निवासीगण हैं जहाँ वादीगण का पैतृक मकान एवं खेती-बारी की जमीन स्थित है। वादीगण के मकान के पास में ही प्रतिवादीगण का मकान है। वादीगण के मकान के सामने उनके सहन की भूमि, जिसे वादपत्र के अन्त में दिये गये मानचित्र में अक्षर अ, ब, स, द से दर्शाया गया है, के वादीगण स्वामीगण तथा अध्यासीगण हैं। वादीगण की उक्त सहन की भूमि से प्रतिवादीगण का कोई वास्ता व सरोकार नहीं है परन्तु फिर भी प्रतिवादीगण वादीगण के उक्त सहन की भूमि को अपने मकान के सामने स्थित अपने सहन की भूमि में मिला लेना चाहते हैं और इसके लिए बाउन्ड्री का निर्माण करने के लिए मौके पर प्रतिवादीगण ने ईटा, बालू आदि निर्माण सामग्री भी एकत्र कर ली है। प्रतिवादीगण को यदि निषिद्ध नहीं किया जाता तो प्रतिवादीगण शीघ्र ही बाउन्ड्री का निर्माण कराकर वादीगण के सहन को अपने सहन की भूमि में मिला लेंगे जिससे वादीगण के परिवारजनों का निकास-पैठास दूभर हो जाएगा। अपने उपरोक्त कथनों के समर्थन में वादीगण ने शपथ-पत्र 7ग<sub>2</sub> प्रस्तुत किया है। उपरोक्त तथ्यों व परिस्थितियों में वादीगण के पक्ष में प्रथम दृष्टया केस विद्यमान है।

वाद पत्र के अन्त में वादीगण द्वारा दिये गये मानचित्र में उभयपक्ष के मकानों तथा उनके सामने स्थित उनके अलग-अलग सहन की स्थिति को दर्शाया गया है जिससे स्पष्ट होता है कि वादीगण के मकान के सामने स्थित भूमि का उपयोग वादीगण द्वारा अपने सहन के रूप में किया जाता है। प्रतिवादीगण द्वारा वादीगण के मकान के सामने स्थित उनके सहन की उपरोक्त भूमि पर बाउन्ड्रीवाल बनाकर अपने सहन में सम्मिलित कर लिए जाने की दशा में न केवल वादीगण को अपूर्णनीय क्षति होगी अपितु वर्तमान मूलवाद तथा

निषेधाज्ञा प्रार्थना-पत्र 6ग2 का उद्देश्य निष्फल हो जाएगा। वाद के तथ्यों व परिस्थितियों में सुविधा का संतुलन भी वादीगण के पक्ष में है। अतएव उपरोक्त तथ्यों व परिस्थितियों में एकपक्षीय व्यादेश निर्गत किये जाने हेतु पर्याप्त आधार उपलब्ध हैं। अतएव दिनांक 19.09.2020 की तिथि वास्ते आपत्ति तथा सुनवाई निषेधाज्ञा प्रार्थना पत्र 6ग<sub>2</sub> नियत करते हुए प्रतिवादीगण को आदेशवाहक के माध्यम से नोटिसें जारी हों। इस बीच उभयपक्ष को आदेशित किया जाता है कि उभयपक्ष उक्त नियत तिथि 19.09.2020 तक विवादित सम्पत्ति के संबंध में मौके पर यथास्थिति बनाये रखें। वादीगण आदेश 39, नियम 3 सीपीसी के परन्तुक के प्रावधानों का अनुपालन अविलंब सुनिश्चित करें।

अपर सिविल जज (जू0डि0)  
कोर्ट संख्या- 28, इलाहाबाद

(4)

**(Ex parte temporary injunction to maintain status quo)**

Court of Addl. Civil Judge (Junior Division), Court No. 28, Allahabad  
O.S. No.218/2020

Mahaveer and Others ..... Plaintiffs

Versus

Ramesh Kumar and Others ..... Defendants

**12.09.2020:** Plaintiffs have instituted the present suit against the defendants for the decree of permanent prohibitory injunction. Plaintiffs have moved application 6C<sub>2</sub> along with affidavit 7C<sub>2</sub> seeking ex-parte ad interim injunction against the defendants. Heard the learned counsel for plaintiffs and perused the record.

As has been stated by the plaintiffs in the plaint, injunction application 6C<sub>2</sub> and the accompanying affidavit 7C<sub>2</sub>, plaintiffs are the residents of village: Rampur, Tehsil and Pargana: Chayal, district: Allahabad and their ancestral houses and agricultural property are situated there. Plaintiffs and defendants have their houses together with their frontage adjacent to each other and use and occupy the same accordingly. The sehan i.e. frontage of the plaintiffs' house has been shown with the letters A, B, C, D in the map given at the bottom of the plaint. Defendants have no concern with the said sehan of the plaintiffs. But the defendants are trying to illegally occupy the aforesaid sehan of the plaintiffs and to annex the same to their sehan by constructing a boundary wall thereon and have collected building material like bricks and sand etc. for the purpose. Plaintiffs have prayed to issue ex-parte temporary injunction against the defendants restraining them from occupying the said sehan land of the plaintiffs and constructing boundary wall thereon. Plaintiffs have filed affidavit 7C<sub>2</sub> in support of their aforesaid statements and as such a prima facie case in favour of the plaintiffs is found to be existing.

As has been shown in the map given at the bottom of the plaint, sehan i.e. frontage of the houses of the plaintiffs and defendants are situate in front of their respective houses under their separate use and occupation. In view of the above facts and circumstances of the case, if the defendants occupy the said sehan land of the plaintiffs and construct the boundary wall thereon, then not only the egress and ingress of the plaintiffs over their sehan land will stand obstructed but the object of the suit and the interim injunction application 6C<sub>2</sub> as well would stand frustrated. The necessary factors like irreparable loss and balance of convenience are thus found to be existing for purposes of granting an ex parte ad interim injunction. So issue notices to the defendants through process server fixing 19.09.2020 for objections and hearing on the injunction application 6C<sub>2</sub>. Both the parties are meanwhile directed to maintain status quo in respect of the aforesaid disputed sehan land till the date fixed i.e. 19.09.2020. Plaintiffs are directed to comply with the provisions of the Proviso to rule 3 of Order 39 CPC forthwith.

Addl. Civil Judge (J.D.)  
Court No- 28, Allahabad



(5)

**(किरायेदार की बेदखली के विरुद्ध एकपक्षीय अस्थायी व्यादेश)**

न्यायालय अपर सिविल जज (जूनियर डिवीजन), कक्ष संख्या-28, इलाहाबाद

मूलवाद संख्या: 218/2020

राम प्रताप सिंह .....वादी

**प्रति**

सुरेश प्रताप सिंह .....प्रतिवादी

**20.09.2020:** वादी राम प्रताप सिंह द्वारा वर्तमान मूलवाद प्रतिवाद सुरेश प्रताप सिंह के विरुद्ध स्थायी निषेधाज्ञा की डिक्री हेतु योजित किया गया है। वादी ने आदेश 39, नियम 1 व 2 सीपीसी के अन्तर्गत प्रार्थनापत्र 6ग2 इस आशय का प्रस्तुत किया है कि न्यायालय प्रतिवादी के विरुद्ध एकपक्षीय अन्तरिम निषेधात्मक व्यादेश जारी करे। वादी के अधिवक्ता को सुना तथा पत्रावली का अवलोकन किया।

वादपत्र, अन्तरिम व्यादेश प्रार्थना-पत्र 6ग2 तथा उसके समर्थन में प्रस्तुत किये गये शपथपत्र 7ग2 में वादी का कथन है कि वादी मकान संख्या 118/2, सिविल लाईन्स, इलाहाबाद में पिछले दो वर्ष से किरायेदार के रूप में रह रहा है। प्रतिवादी उक्त मकान का स्वामी और भवन स्वामी है। वादी और प्रतिवादी के बीच दिनांक 12.08.2018 को एक लिखित किरायानामा सम्पन्न हुआ था और तब से वादी रू0 1500/- प्रतिमाह की दर से प्रतिवादी को किराया देता आ रहा है जिसकी रसीदें भी प्रतिवादी द्वारा वादी को दी जाती रही हैं। किरायेनामे में तयशुदा दो वर्ष की अवधि समाप्त हो जाने पर वादी ने प्रतिवादी से अनुरोध किया कि वह किराये की अवधि अगले एक वर्ष के लिए बढ़ा देवे ताकि उक्त अवधि में वादी कोई दूसरा उपयुक्त मकान ढूँढकर किराये पर ले सके और प्रतिवादी का मकान खाली कर देवे परन्तु प्रतिवादी ऐसा नहीं करके वादी को बलपूर्वक उसके किरायेदारी वाले भाग से निष्कासित करने और बिजली-पानी का कनेक्शन भी काट देने की धमकी दे रहा है।

वादी ने अपने उपरोक्त कथनों के समर्थन में शपथ-पत्र 7ग2, किरायानामा दिनांकित 12.08.2018 तथा पिछले बारह माह के किराये की रसीदें प्रस्तुत की हैं जिनके अवलोकन से स्पष्ट होता है कि वादी उपरोक्त मकान में उसके भवन स्वामी/प्रतिवादी का किरायेदार है और प्रतिवादी को किराया देता आ रहा है और किराये की अवधि समाप्त होने जाने के बाद भी उपरोक्त मकान में निवास

कर रहा है। उपरोक्त तथ्यों एवं कागजातों के आलोक में वादी के पक्ष में प्रथम दृष्टया केस विद्यमान होना पाया जाता है। किरायेदारी की अवधि समाप्त होने जाने के बाद भी उक्त मकान में वादी के आबाद होने से सुविधा का संतुलन वादी के पक्ष में है और यदि उसे प्रतिवादी द्वारा बलपूर्वक निष्कासित कर दिया जाता है तो इससे न केवल वादी को अपूर्णनीय क्षति कारित होगी अपितु वर्तमान निषेधाज्ञा वाद तथा निषेधाज्ञा प्रार्थना पत्र का उद्देश्य भी निष्फल हो जायेगा। केस के उपरोक्त तथ्यों व परिस्थितियों में प्रतिवादी के विरुद्ध एकपक्षीय रूप से अस्थायी निषेधात्मक व्यादेश जारी करने के लिए पर्याप्त आधार विद्यमान हैं। अतएव पत्रावली दिनांक 27.09.2020 को निषेधाज्ञा प्रार्थना पत्र 6ग2 की सुनवाई के लिए प्रस्तुत हो। प्रार्थना पत्र 6ग2 के विरुद्ध प्रतिवादी से आपत्ति आमंत्रित हो। इस बीच प्रतिवादी को निषिद्ध किया जाता है कि प्रतिवादी वादी को विवादित किरायेदारी वाले मकान से बिना विधिक प्रक्रिया अपनाये हुए बलपूर्वक निष्कासित नहीं करे। वादी आदेश 39, नियम 3 सीपीसी के परन्तुक के प्रावधानों का अनुपालन अविलम्ब सुनिश्चित करे।

अपर सिविल जज (जूनियर डिवीजन)  
कक्ष संख्या-28, इलाहाबाद

(5)

**(Ex parte ad interim injunction against forcible eviction of tenant)**

OS No. 218/2020

Ram Pratap Singh .....Plaintiff

**Versus**

Suresh Pratap Singh .....Defendant

**20.09.2020:** Plaintiff Ram Pratap Singh has instituted the present suit against the defendant Suresh Pratap Singh for a decree of permanent prohibitory injunction. Plaintiff has filed application 6C2 under Order 39, rules 1 and 2 CPC and has also sought for issuing an ex parte ad interim injunction against the defendant. Heard the learned counsel for the plaintiff and perused the record.

As stated in the plaint, interim injunction application 6C2 and the accompanying affidavit 7C2, plaintiff has been residing as tenant in house No. 118/2, Civil Lines, Allahabad for the last two years. Defendant is the owner and landlord of the said house. A written agreement of tenancy was executed on 12.08.2018 between the plaintiff and the defendant. As agreed between the plaintiff and the defendant in the said agreement of tenancy, plaintiff has been paying Rs. 1500/- per month as rent to the defendant. After expiry of two years period of tenancy as agreed between the parties, the plaintiff requested the defendant to further extend the period of tenancy for one year but the defendant refused and is trying to forcibly evict the plaintiff from the tenanted portion and is also threatening to obstruct the water and electric supply to the tenanted portion.

In support of his aforesaid statements, plaintiff has filed his affidavit 7C2, agreement of tenancy dated 12.08.2018 and the rent receipts issued by the defendant to the plaintiff. As is revealed from the said affidavit, agreement of tenancy and the rent receipts, plaintiff was residing in the said house as tenant of the defendant and despite expiration of the period of tenancy, plaintiff is still residing in the said house. In view of the aforesaid facts of the case and the documents produced by the plaintiff, a prima facie case is found to be existing in favour of the plaintiff. Since the plaintiff is still residing in the aforesaid house, the balance of convenience also exists in his favour. In case the plaintiff is evicted forcibly by the defendant from the said house, the plaintiff will have to suffer irreparable injury and in the absence of an ad interim injunction, the very object of the present suit and the injunction application would stand frustrated. So, satisfactory grounds exist for granting ex parte ad interim injunction in favour of the plaintiff and against the defendant. So invite objections from the defendant by fixing 27.09.2020 for hearing on the injunction application 6C2. Defendant is meanwhile restrained from evicting the plaintiff forcibly from the said house without applying due process of law. Plaintiff is directed to comply with the provisions of the Proviso to rule 3 of Order 39 CPC forthwith.

(6)

(जब एकपक्षीय अस्थायी व्यादेश पिछली तिथि अथवा तिथियों पर विस्तारित नहीं किया गया हो)

**22.09.2020:** पत्रावली प्रस्तुत हुई। पुकार पर उभयपक्ष के अधिवक्तागण उपस्थित हैं। वाद आज वादी के संशोधन प्रार्थना-पत्र 35क2 की सुनवाई के लिए नियत है। प्रतिवादीगण के अधिवक्ता ने 35क2 की प्रति प्राप्त करते हुए 35क2 के विरुद्ध आपत्ति प्रस्तुत करने के लिए समय प्रदान किये जाने का अनुरोध किया है। अतएव पत्रावली दिनांक 25.10.2020 को 35क2 की सुनवाई के लिए प्रस्तुत है। प्रतिवादीगण उक्त नियत तिथि तक 35क2 के विरुद्ध अपनी आपत्तियाँ प्रस्तुत कर सकते हैं।

वादी की ओर से आज प्रार्थना-पत्र 36ग2 इस आशय का प्रस्तुत किया गया है कि वादी के पक्ष में पूर्व में पारित किये गए एकपक्षीय अस्थायी व्यादेश को अग्रिम नियत तिथि तक के लिए विस्तारित किया जावे। 36ग2 के विरुद्ध प्रतिवादीगण के अधिवक्ता द्वारा आपत्ति की गई है। सुना। आदेश-पत्रों के अवलोकन से स्पष्ट होता है कि न्यायालय सिविल जज (जूनियर डिवीजन), पश्चिमी, इलाहाबाद द्वारा दिनांक 20.12.2019 को प्रतिवादीगण के विरुद्ध एकपक्षीय अस्थायी व्यादेश जारी किया गया था जो विभिन्न तिथियों पर विस्तारित होता रहा परन्तु दिनांक 05.05.2020 को तथा उसके बाद नियत की गई तिथियों पर उक्त अस्थायी व्यादेश विस्तारित नहीं किया गया, यद्यपि कि वादी द्वारा दिनांक 05.05.2020 को प्रार्थना-पत्र 32ग2 अस्थायी व्यादेश को विस्तारित किये जाने के लिए प्रस्तुत किया गया था। प्रार्थना-पत्र 32ग2 पर संभवतः भूलवश दिनांक 05.05.2020 को आदेश पारित नहीं हो सका था। अभी तक निषेधाज्ञा प्रार्थना-पत्र 6ग2 का गुण-दोष के आधार पर निस्तारण नहीं हुआ है और 6ग2 अभी भी सुनवाई व निस्तारण के लिए लम्बित है। उपरोक्त तथ्यों व परिस्थितियों को विचारगत करते हुए प्रार्थना-पत्र 36ग2 न्यायहित में स्वीकृत किया जाता है। वादी के पक्ष में पूर्व में पारित एकपक्षीय अस्थायी व्यादेश आज से अग्रिम नियत तिथि 25.10.2020 तक के लिए प्रभावी किया जाता है।

अपर सिविल जज (जूनियर डिवीजन)  
कक्ष संख्या-28, इलाहाबाद

(6)

**(Order when ex parte ad interim injunction discontinued due to non-extension on previous date/ dates)**

**22.09.2020:** Case called out. Learned counsel for both the parties are present. Case is today fixed for hearing on amendment application 35A2 moved by plaintiffs. Learned counsel for defendants has received copy of 35A2 today and has sought for time to file objections against 35A2. So fix 25.10.2020 for hearing on 35A2. Defendants may file their objections against 35A2 by the date fixed.

Plaintiffs have today moved application 36C2 with the prayer to extend the ex parte temporary injunction granted earlier in their favour. The learned counsel for the defendants has opposed 36C2. Heard. It is revealed from perusal of the previous order-sheets that ex parte temporary injunction was granted in favour of the plaintiffs and against the defendants on 20.12.2019 by the court of Civil Judge (Junior Division), West, Allahabad and the same was extended from date to date but was not extended further on 05.05.2020 despite an application 32C2 having been moved by the plaintiffs on 05.05.2020. It appears that no order could be passed by the court on 32C2 extending the ex parte temporary injunction due to oversight. Temporary injunction application 6C2 is still pending for hearing and disposal on merits. Considering the aforesaid facts and circumstances, application 36C2 is allowed in the interest of justice. Ex parte temporary injunction granted earlier is again made effective from today upto the next date fixed i.e. 25.10.2020.

Addl. Civil Judge (Junior Division)  
Court No. 28, Allahabad

(7)

उभयपक्ष की सुनवाई के उपरान्त गुणदोष के आधार पर  
निषेधाज्ञा प्रार्थना पत्र का निस्तारण

न्यायालय अपर सिविल जज (जूनियर डिवीजन), कक्ष संख्या-5, बलरामपुर

मूलवाद संख्या: 218/2020

राम प्रताप सिंह .....वादी

प्रति

सुरेश प्रताप सिंह एवं अन्य.....प्रतिवादीगण

अंतरिम निषेधाज्ञा प्रार्थना पत्र 6ग2 का निस्तारण

आदेश

**22.12.2020:** वादी राम प्रताप सिंह द्वारा वर्तमान मूलवाद प्रतिवादीगण सुरेश प्रताप सिंह एवं अन्य के विरुद्ध स्थायी निषेधाज्ञा की डिक्री हेतु योजित किया गया है। वादी ने आदेश 39, नियम 1 व 2 सीपीसी के अन्तर्गत प्रार्थनापत्र 6ग2 मय शपथपत्र 7ग2 इस आशय का प्रस्तुत किया है कि न्यायालय प्रतिवादीगण को निषिद्ध कर देवे कि प्रतिवादीगण वर्तमान मूल वाद के लम्बित रहने के दौरान वादी के अध्यासन वाली विवादित भूमि में हस्तक्षेप नहीं करे, अतिक्रमण नहीं करें और उसमें किसी प्रकार का निर्माण नहीं करें।

2. उभयपक्ष के विद्वान अधिवक्तागण को सुना तथा पत्रावली का परिशीलन किया।
3. वादपत्र, निषेधाज्ञा प्रार्थना पत्र 6ग2 एवं शपथ पत्र 7ग2 में अंकित वादी के कथनानुसार वादी विवादित भूमि का उपयोग अपने मकान के सहन के रूप में लम्बे अरसे से करता चला आ रहा है। विवादित भूमि में वादी का परिवार उठता-बैठता है और उसमें उसके जानवरों की नाँद तथा छप्पर का बैठका भी बना हुआ है। विवादित भूमि का उपयोग वादी सहन के अतिरिक्त अन्य विविध रूपों में भी करता आ रहा है। प्रतिवादीगण का मकान भी वादी के मकान से लगा हुआ उत्तर की ओर स्थित है। प्रतिवादीगण का विवादित भूमि से कोई सम्बन्ध व सरोकार नहीं है, फिर भी प्रतिवादीगण वादी के सहन की विवादित भूमि में वादी के कब्जे में अनधिकृत रूप से हस्तक्षेप करते हैं और उसमें अतिक्रमण करके चहार दिवारी का निर्माण करके उसे अपने सहन की भूमि में मिला लेना चाहते

हैं। प्रतिवादीगण ने इसी उद्देश्य से पिछले दिनों मौके पर ईट, सीमेन्ट और मजदूर एकत्र करके वादी के सहन में जबरन चहार दिवारी का निर्माण करना चाहा जिसका विरोध वादी द्वारा किया गया। गांव वालों के हस्तक्षेप के पश्चात् उस दिन प्रतिवादीगण उपरोक्त निर्माण नहीं कर सके परन्तु प्रतिवादीगण लगातार इस प्रयास में लगे हुए हैं कि वह वादी की सहन की उपरोक्त भूमि पर अतिक्रमण करके चहार दिवारी का निर्माण कर लें और उसे अपने मकान की सहन की भूमि में सम्मिलित कर लें। वादी द्वारा निषेधाज्ञा प्रार्थना पत्र 6ग2 के माध्यम से अनुरोध किया गया है कि प्रतिवादीगण को निषिद्ध कर दिया जावे कि प्रतिवादीगण वर्तमान मूलवाद के लम्बित रहने की अवधि में वादी के सहन की प्रश्नगत भूमि में उसके अध्यासन में हस्तक्षेप नहीं करे, उसमें अतिक्रमण नहीं करें और उस पर चहार दिवारी का निर्माण नहीं करें।

4. प्रतिवादीगण ने प्रतिवाद पत्र एवं आपत्ति 18ग2 मय शपथपत्र 19ग2 प्रस्तुत करके वादी के उपरोक्त कथनों का खण्डन करते हुए निषेधाज्ञा प्रार्थना पत्र 6ग2 का विरोध किया है। प्रतिवादीगण का कथन है कि उभयपक्ष एक ही पूर्वज के वंशज हैं। वादी तथा प्रतिवादीगण के पिता के मध्य पूर्व में इस आशय का समझौता हुआ था कि वादी अपने मकान के सामने की सहन की भूमि का विवादित भाग प्रतिवादीगण के पिता को दे देंगे और उसके बदले में प्रतिवादीगण के पिता वादी को ग्राम: बिकारूपुर स्थित भूमिधरी गाटा संख्या-42 में उतनी ही भूमि दे देंगे। प्रतिवादीगण के पिता ने तयशुदा उक्त भूमि वादी को दे दिया परन्तु वादी ने सहन की उपरोक्त विवादित भूमि पर प्रतिवादीगण के पिता का कब्जा नहीं होने दिया और अब जब प्रतिवादीगण अपने हिस्से की उपरोक्त विवादित भूमि का अध्यासन लेना चाहते हैं तो वादी अनुचित रूप से उसका विरोध करता है। प्रतिवादीगण का कथन है कि विवादित भूमि वास्तव में प्रतिवादीगण के ही स्वत्व, स्वामित्व व अधिकार की भूमि है जिसमें वादी का कोई स्वत्व व अधिकार निहित नहीं है।
5. जहां तक प्रतिवादीगण की इन आपत्तियों का प्रश्न है कि वादी तथा प्रतिवादीगण के पिता के मध्य पूर्व में सम्पन्न हुए समझौते के फलस्वरूप वादी ने विवादित भूमि प्रतिवादीगण के पिता को दे दी थी और तब से विवादित भूमि का स्वामी वादी नहीं अपितु प्रतिवादीगण के पिता और उनके बाद प्रतिवादीगण हो गये हैं तथा वादी का विवादित भूमि में कोई स्वत्व, स्वामित्व व अधिकार शेष नहीं रह गया है, उस सम्बन्ध में स्पष्ट किया जाता है कि अन्तरिम निषेधाज्ञा प्रार्थना पत्र के निस्तारण की अवस्था पर विवादित भूमि में पक्षकारों के स्वत्व, स्वामित्व अथवा अधिकारों का विनिश्चय किया जाना अपेक्षित नहीं है अपितु विवादित भूमि पर कब्जे के आधार पर ही निषेधाज्ञा प्रार्थना पत्र का निस्तारण किया जा सकता है।

6. वादपत्र, निषेधाज्ञा प्रार्थना पत्र 6ग2 एवं उसके समर्थन में प्रस्तुत किये गये शपथ 7ग2 में वादी का स्पष्ट कथन है कि सहन की उपरोक्त विवादित भूमि पर एक मात्र वादी का ही कब्जा काफी अरसे से चला आ रहा है जिसका उपयोग वादी एवं उसका परिवार विविध रूप में करता है। अमीन आयुक्त द्वारा विवादित भूमि का मानचित्र निर्मित करते हुए अपनी रिपोर्ट 29ग2 प्रस्तुत की गयी है। उक्त मानचित्र में अमीन द्वारा विवादित भूमि को वादी के सहन दरवाजे के सामने स्थित होना दर्शाया गया है न कि प्रतिवादीगण के दरवाजे के सामने। वादी द्वारा वादपत्र के अन्त में दिये गये मानचित्र में विवादित भूमि की जो स्थिति एवं चतुर्सीमाएं दर्शायी गयी हैं, उसकी पुष्टि अमीन आयुक्त द्वारा निर्मित मानचित्र से होती है। स्वयं प्रतिवादीगण द्वारा भी अपनी आपत्ति 18ग2 एवं प्रति शपथपत्र 19ग2 में किये गये कथनों के अनुसार विवादित भूमि वादी के ही अध्यासन में रही है और वर्तमान में भी वादी का ही उस पर कब्जा है। विवादित भूमि पर वादी का अध्यासन होने के कारण वादी के पक्ष में स्पष्ट रूप से प्रथम दृष्टया केस विद्यमान है।
7. विवादित भूमि पर वादी का कब्जा होने के कारण यदि वाद के लम्बित रहने की अवधि में प्रतिवादीगण द्वारा उस पर अतिक्रमण करके चहार दिवारी का निर्माण कर लिया जाता है तो उससे न केवल सहन के रूप में विवादित भूमि के उपयोग से वादी व उसका परिवार वंचित हो जायेगा अपितु उससे वादी तथा उसके परिवार को अत्यन्त असुविधा कारित होने की भी संभावना उत्पन्न हो जावेगी। अतएव सुविधा का संतुलन वादी के पक्ष में है न कि प्रतिवादीगण के पक्ष में। विवादित भूमि में पक्षकारों के स्वत्व व स्वामित्व के विनिश्चय से पूर्व प्रतिवादीगण द्वारा अतिक्रमण करके चहार दिवारी का निर्माण कर लेने से वादी को अपूर्णनीय क्षति कारित होगी।
8. उपरोक्त विवेचन के आलोक में स्पष्ट है कि अंतरिम निषेधाज्ञा हेतु आवश्यक पूर्व विधिक शर्तें यथा प्रथम दृष्टया केस, सुविधा का संतुलन तथा अपूर्णनीय क्षति अपने पक्ष में साबित कर पाने में वादी सफल रहा है। अतएव निषेधाज्ञा प्रार्थना पत्र 6ग2 स्वीकार किया जाता है। प्रतिवादीगण को निषिद्ध किया जाता है कि वह वर्तमान मूलवाद के लम्बित रहने की अवधि में विवादित भूमि में वादी के शांतपूर्ण अध्यासन में हस्तक्षेप नहीं करे, उसमें अतिक्रमण नहीं करें तथा चहार दिवारी का निर्माण नहीं करे।

(प्रेम मोहन)

अपर सिविल जज (जूनियर डिवीजन),  
कक्ष संख्या-5, बलरामपुर



(7)

**Disposal of Interim Injunction Application on Merits  
after Hearing both the Parties**

Court of Addl. Civil Judge (Junior Division), Court No. 5, Balrampur

OS No. 218/2020

Ram Pratap Singh .....Plaintiff

**Versus**

Suresh Pratap Singh & Others.....Defendants

**Disposal of Interim Injunction Application 6C2**

**ORDER**

**22.12.2020:** Plaintiff Ram Pratap Singh has instituted the present suit against the defendants Suresh Pratap Singh & Others for the decree of permanent prohibitory injunction. Plaintiff has filed application 6C2 under Order 39, rules 1 and 2 CPC with the prayer to grant interim injunction restraining the defendants from interfering into his peaceful possession over the disputed sehan land, encroaching and constructing boundary wall thereon.

2. Heard the learned counsel for the parties and perused the record.
3. As has been stated in the plaint, interim injunction application 6C2 and the accompanying affidavit 7C2, the plaintiff has been in possession of the land situate in front of his main door since long and has been using the same for various purposes. The plaintiff has his animal pots and a thatched baithaka in the said sehan land. House of the defendants is situated adjacent towards north of the plaintiff's house. Defendants have no right and title in the disputed land and are in no way concerned to the disputed sehan land. The defendants have been trying to encroach upon the disputed land and annex the same to their sehan land by constructing a boundary wall thereon. The defendants collected bricks, cement and labourers recently on the spot to construct the boundary wall on the disputed land. On resistance being offered by the plaintiff and intervention of the villagers, the defendants could not succeed in constructing the boundary wall but they are continuously threatening to forcibly occupy the disputed land and annex it to the sehan land of their main door by erecting a boundary wall on it. The plaintiff by means of his injunction application 6C2 has prayed for issuing interim prohibitory injunction restraining the defendants from interfering into his peaceful possession over the sehan land in dispute, encroaching and constructing boundary wall on it during the pendency of the present civil suit.

4. The defendants have contradicted the aforesaid statements of the plaintiff and have opposed the injunction application 6C2 by filing their written statement, objection 18C2 and counter affidavit 19C2. The stand taken by the defendants is that both the parties are the descendants of a common ancestor. The plaintiff and the father of the defendants had reached an agreement in the past that the plaintiff would give away the disputed sehan land to the father of the defendants and in lieu thereof would accept land in equal area from the defendants' bhumidhari Gata No. 42 situate in village: Bikarupur. Honouring the said agreement, the father of the defendants gave away the part of his said bhumidhari land to the plaintiff but the plaintiff did not allow the defendants' father to take possession of the disputed sehan land as agreed between them. The defendants state that as per the said agreement between the plaintiff and the defendants' father, the defendants are the sole owner of the disputed sehan land and the plaintiff has lost his rights and title in the aforesaid said land under the agreement reached between him and the defendants' father in the past.
5. As is evident from the aforesaid stands of the parties, the defendants claim their right and title in the disputed sehan land on the basis of an agreement reached between the plaintiff and the defendants' father in the past. The plaintiff also claims his right and title in the disputed sehan land. It is to be clarified here that at the stage of disposal of an interim injunction application, question of right or title in the disputed land cannot be gone into by the court nor the same is relevant for purposes of disposal of the injunction application in as much as the rival claims as to right and title of the parties in the disputed land can only be decided at the trial and not at the stage of disposal of the interim injunction application. An interim injunction application has to be decided on the basis of possession of the parties over the disputed land.
6. The plaintiff has clearly stated in his plaint, injunction application 6C2 and the accompanying application 7C2 that he is in the exclusive possession of the land in dispute for long and his family has been using it in various forms. From the position of the disputed sehan land as shown by the Amin Commissioner in his map and report 29C2, it transpires that the disputed sehan land lies in front of the main door of the house of the plaintiff and not on the frontage of the defendants' house. The position of the disputed sehan land as shown by the plaintiff in the map given at the bottom of the plaint thus finds support from the map prepared by the Amin Commissioner. The defendants themselves have admitted in their objection 18C2 and the accompanying affidavit 19C2 that the disputed sehan land is presently in the occupation of the plaintiff and for that reason, a clear prima facie case in favour of the plaintiff is found to be existing on the basis of his exclusive possession over the disputed sehan land.
7. In the event of any encroachment and construction of boundary wall on the disputed sehan land presently under occupation of the plaintiff, it is the plaintiff who would stand deprived of his use and occupation of the

disputed sehan land and not the defendants. The balance of convenience with regard to the use and occupation over the disputed sehan land thus lies in favour of the plaintiff. In the event of an encroachment and construction of boundary wall thereon by the defendants, the plaintiff would have to suffer irreparable loss in as much as he would stand deprived of the user of the said sehan land.

8. In the light of the observations made in the preceding paragraphs, the plaintiff has succeeded in establishing in his favour a clear prima facie case, balance of convenience and irreparable injury, necessary for grant of interim injunction, against the defendants. The interim injunction application 6C2 is therefore allowed. The defendants are restrained during the pendency of the present civil suit from interfering into the peaceful possession of the plaintiff over the disputed sehan land and from encroaching thereon by constructing the boundary wall.

(Prem Mohan)  
Addl. Civil Judge (Junior Division)  
Court No. 5, Balrampur

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