

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 07.05.2025
Pronounced on: 23.05.2025

FAO No.12/2020

MOHAMMAD SHABAN GANAI & ANR. ...PETITIONER(S)

Through: - Mr. N. A. Kouchai, Advocate.

Vs.

MUSHTAQ AHMAD RATHER ...RESPONDENT(S)

Through: - Mr. Rouf Parray, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellants, through the medium of present appeal, have challenged order dated 20.10.2020, passed by the learned Principal District Judge, Budgam, whereby application filed by them under Order 39 Rule 1 and 2 CPC has been dismissed.

2) It appears that the appellants had filed a suit for preemption in respect of land measuring 01 kanal bearing Survey No.361/124 situated at Village Aaribagh Tehsil Chadoora, for exercising their right of prior purchase against their co-sharer, Mst. Farzi, who had sold the said land to one Mohammad Abdullah Sheikh. Vide judgment and decree dated 19.02.2007 passed by learned Sub Judge, Budgam, the aforesaid suit was decreed in favour of the appellants and the defendants in the suit i.e. Mst. Farzi and

Mohammad Abdullah Sheikh, were directed to deliver possession of the land in question in favour of the appellants.

3) It seems that after the passing of aforesaid judgment and decree by learned Sub Judge, Budgam, the respondent herein purchased the land in question by virtue of sale deed dated 05.10.2007 and came into possession thereof. It also appears that the respondent filed a civil suit during the pendency of the execution proceedings seeking a declaration and permanent injunction against the appellants and one Mohammad Ashraf Baba. The respondent prayed for a declaration that decree dated 19.02.2007 is null and void, with a further declaration that he is owner in possession of the suit land.

4) An application under Order 7 Rule 11 CPC came to be filed by the appellants herein before the trial court, which came to be rejected in terms of order dated 16.06.2008. The said order came to be challenged by the appellants before this Court by way of a revision petition bearing Civil Revision No.127/2008. Vide judgment dated 22.08.2012 passed by this Court, the revision petition was allowed and the plaint filed by the respondent herein was rejected and he was given liberty to file an application in terms of Order 21 Rule 99 of CPC before the Executing Court for

determination of his rights in respect of the land in question.

5) It appears that in the meantime, Mohammad Abdullah Sheikh, who had purchased the land in question from the original owner, Mst. Farzi, challenged the judgment and decree dated 19.02.2007 by filing an appeal before the learned Principal District Judge, Budgam. Since the appeal was time barred, an application seeking condonation of delay was also filed by Shri Mohammad Abdullah Sheikh before the Principal District Judge, Budgam. During the pendency of the proceedings relating to condonation of delay application, the appellants herein, who are respondents in the appeal before the court below, moved an application seeking a temporary injunction against the respondent herein so as to restrain him from raising any construction on the suit land.

6) The respondent herein, who is not a party to the appeal before the Court of learned District Judge, Budgam, contested the application by filing his reply, in which he submitted that he has purchased the land in question by virtue of sale deed dated 05.10.2007 and the same is owned and possessed by him for the last more than 13 years. It was claimed by the respondent that the appellants herein have no right to cause interference in the land in question.

7) The learned District Judge, after hearing the parties and after analyzing the material on record, dismissed the application of the appellants in terms of impugned order dated 20.10.2020, on two counts; (i) that an interim injunction cannot be passed against a stranger to the case; and (ii) because the respondent herein is not a party to the appeal pending before the said court, as such, no interim injunction can be passed against him. On merits, it has been observed by the learned District Judge that the appellants have failed to show that in case injunction as prayed for is not granted in their favour, it would result in irreparable loss to them. It has also been observed by the learned court below that the respondent has been in possession of the land in question and the sale deed executed in his favour has not been set aside so far, therefore, he is entitled to raise construction on the land in question.

8) The appellants have challenged the impugned order on the grounds that the respondent is a transferee *pendente lite* and in law he has no right to raise construction on the suit land which is subject matter of decree dated 19.02.2007. It has been further contended that the appellants have a decree of civil court in their favour, therefore, there is a *prima facie* case in their favour but this

aspect of the matter has been conveniently ignored by the learned trial court while passing the impugned order.

9) I have heard learned counsel for the parties and perused record of the case.

10) The first question which is required to be determined is as to whether an injunction order can be passed by a court against a person who is not a party to the proceedings. In this regard, learned counsel for the appellant has submitted that even though the respondent is not a party to the appeal pending before the court below, still then because he is a transferee *pendente lite*, as such, he derives his rights to the suit land through the judgment debtor and, as such, it is not open to him to ignore the judgment and decree passed against the judgment debtor. Learned counsel for the appellants, while relying upon the judgment of the Supreme Court in the case of **Usha Sinha vs. Dina Ram & Ors.** (Appeal (civil) No.1998 of 2008 decided on 14th March, 2008), has contended that the doctrine of lis pendence prohibits a party from dealing with the property which is the subject matter of suit and lis pendence itself is to be treated as constructive notice to a purchaser that he is bound by the decree that may be passed in the suit. On this basis, it is being contended that

purchaser of a property, which is subject matter of a decree, is subject to the same conditions and disabilities as a judgment debtor and, therefore, if the judgment cannot raise construction on the property which is subject matter of decree, the same logic applies to a person who has purchased the property from a judgment debtor.

11) So far as the aforesaid principle of law canvassed by learned counsel for the appellants is concerned, there can be no dispute about the same but the issue in this case is somewhat different. A civil court exercising its original jurisdiction or an appellate court derives its power to pass an interim injunction from the provisions contained in Order 39 Rule 1 and 2 CPC, which read as under:

1. Cases in which temporary injunction may be granted.—Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding] his creditors,
- (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 5[or dispossession of the plaintiff, or otherwise

causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach.—*(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.*

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

12) From the analysis of the aforesaid provisions, it is clear that an interim injunction can be granted only when a defendant threatens to damage, alienate, sell or remove the suit property or if he threatens to dispossess the plaintiff from the said property. An interim injunction can also be granted if it is shown that injury would be caused to the plaintiff in relation to any property in dispute in the suit or if the suit property is in danger of being wasted, damaged or alienated by any party to the suit. The language of the aforesaid provision is clear, inasmuch as an order of interim injunction can be passed only in respect of the suit property against a party to the suit. In certain eventualities, the interim injunction can be passed only against a defendant whereas in situations covered by clause (a) of

Rule 1 of Order 39 CPC, an interim injunction can be issued against either of the parties to a suit. There is nothing in the provisions contained in Order 39 Rule 1 and 2 CPC that would vest power with a civil court or with appellate court to pass an interim injunction against a person who is not party to the proceedings.

13) An interim injunction is granted in favour of a party to the proceedings so as to preserve the subject matter of lis till the disposal of the suit with a view to determine the claims and counter claims put forward by the parties in respect of the suit property. A person who is not a party to the proceedings obviously has not put forward his claim with regard to the suit property before the court. Thus, there is nothing to be investigated in respect of the claim that such person may have with regard to the suit property. Therefore, there can be no justification for grant of an interim injunction in respect of a claim which is not even projected by a person before the court in a particular proceeding. It is not the scope of Order 39 Rule 1 and 2 CPC to pass interim directions against a person who is not a party to the suit or the appeal.

14) In view of the above, the learned court below is right in its observation that no interim injunction could be

granted against the respondent who is not a party to the appeal, even though he may be claiming his rights to the suit property through the appellants before the court below. The proper course open to the appellants was to file a fresh suit for injunction against the respondent and seek an interim injunction against the respondent in the said suit. They cannot seek an order against the respondent in the appeal before the court below as the respondent is not a party therein.

15) For the foregoing reasons, I do not find any ground to interfere in the impugned order passed by the learned District Judge, Budgam. The appeal lacks merit and the same is dismissed accordingly. Interim direction, if any, shall cease to be in operation.

16) No order as to costs.

17) A copy of this judgment be sent to the learned court below for information.

(Sanjay Dhar)
Judge

Srinagar,
23.05.2025
“Bhat Altaf”

Whether the judgment is reportable: YES/NO