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MA-715-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

MISC. APPEAL No. 715 of 2025*AKSHAY KUMAR JAIN AND OTHERS**Versus**STATE OF M.P. AND OTHERS*

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Appearance:

Shri Sameer Anant Athawale, learned counsel for the appellants.

Shri Shrey Raj Saxena, learned counsel for the respondent No.1.

Shri Gauransh Vyas, learned counsel for the respondent No.6.

Ms. Vishakha Raghwanishi, advocate appearing on behalf of Ms.  
Darshana Baghel, learned counsel for the respondent No.5.

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Heard and Reserved on : 23.09.2025

Pronounced on : 21.11.2025  
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ORDER

The present appeal has been filed under Order 43 Rule 1 (r) of CPC against the order dated 17.12.2024 passed by the learned trial court in Civil Suit No.102-A/24 whereby rejecting the application under Order 39 Rules 1 and 2 of CPC by the appellants/plaintiffs.

2. The short facts of the case are that the appellants filed a civil suit for declaration and possession against the respondents. It was averred in the plaint that in Ward No.12 (old Ward No.3) called Nai Sadak, Jawahar Maarg, District-Shajapur, a plot having length of 45 fts. and width 31.6" is



situated. That piece of the land (hereinafter "suit property") was purchased by the grand-father of the appellants namely Late Lakhmichand vide registered sale deed dated 22.01.1957 from one Leela Devi, who had purchased the suit property vide registered sale deed dated 21.11.1955 from one Nanhe Khan Miyaan.

3. It was also averred in the plaint that Lakhmichand had died issue less and unmarried on 24.04.1975. The father of Krupachand was real brother of Lakhmichand, thus, Lakhmichand had adopted Krupachand. And Krupachand has died on 26.10.2013. After his death, wife of Late Krupachand and his son Akshay Kumar (appellant / plaintiff No.1) and two daughters (the appellants / plaintiff Nos.2 and 3) have remained. Wife of Late Krupachand has died on 24.07.2023 and one son namely Akshay Kumar Jain has left home 35-36 years ago with respect to whom a declaration of civil death has been made vide judgment dated 08.07.2024 passed in civil suit No.95/2019.

4. The plaintiffs have further stated in the plaint that the suit property was a dilapidated building which was rented to one Anwar Ali on 13.10.1980 for a period of 11 months at monthly rent of Rs.100/- by executing a rent agreement. However, the four sides of the suit property were wrongly mentioned in as much as for the east side of the property "Bheru Ji Kaa Chabutaraa" was mentioned which is not correct in view of the registered sale deed dated 20.10.1957. It was further averred in the plaint that based on this incorrect mention of east side boundary of the suit property, same mistake was committed in the Nazul NOC dated 30.05.1978 in which it has



wrongly been mentioned as in the east side "Shankar Chabutaraa". It is only at the time of drafting of the plaint that these mistakes came to notice of the plaintiffs/appellants. It has further been stated in para 11 of the plaint that at the time of execution of registered sale-deed dated 22.01.1957, the suit property was in the form of an open land i.e. a collapsed building and possession of which was handed over by the seller Leeladevi to purchaser Lakshmichand by earmarking the suit property by the pegs.

5. The appellants/plaintiffs further stated that they are in continuous possession of the suit property since it was purchased by Lakhmichand in the year 1957, however, because of oversight the name of the purchaser could not be mutated in the revenue record and when the respondents started construction on the suit property on 30.01.2024, in a sudden manner, a cause of action for filing the suit arose. These were the pleadings in the plaint.

6. Appellants/plaintiffs filed an application under Order 39 Rules 1 and 2 along with the plaint before the learned trial court for grant of temporary injunction in as much as "till the pendency of the suit no construction shall be carried out on the suit property".

7. The respondents filed their reply to the application under Order 39 Rule 1 and 2 in which it was pointed out that the suit property is in their possession since long back whereon temple of Bhuteshwar Mahadev is situated. It was also pointed that four-boundaries of the suit property and the property described in the sale deed of 21.09.1957 are different, thus, it was pleaded that the suit property is not the same which is trying to be demonstrated by the plaintiffs/appellants.



8. It was also stated in the reply in special objections in para 8 that although it has been pleaded in the plaint that there is dilapidated building on the suit property, however, near Bhuteshwar Mahadeve temple there is no such building in existence. As as, it was argued that the suit property is not identifiable in terms of the pleadings of the appellant, hence, request was made for rejection of the application.

9. The respondents Nos.6 to 8 filed their separate reply to the application in which it was stated that the temple is situated since very long and it is not usual that for the last 75 years there was no whisper of any assertion with respect to title on the suit property when the land has remained in possession of the temple. It was also pointed out that for the renovation of the temple permission was granted by the municipal council, Shajapur in the year 1985 and renovation was done. As such it was pleaded that there is no prima facie case, no balance of convenience and no irreparable loss to the plaintiff/appellant, hence, rejection of application is prayed.

10. Learned trial court after considering the rival submissions passed the impugned order on 17.12.2024 thereby rejecting application of the plaintiff/appellant by recording that no prima facie case was found, no balance of convenience and no irreparable loss in favour of the plaintiff was found.

11. Learned counsel for the appellants straightway points out the law in this behalf by placing reliance on the judgment of this Court passed in the case of **Shankarlal Vs. State of Madhya Pradesh, 1979 ILR 74**. He submits by referring to the said judgment that a question which false for



determination is the existence of a prima face case in support of the right claimed by plaintiff and the requirement of law is that the Court has to examine whether the plaintiff's claim is frivolous or vexatious i.e. whether there is a serious question to be tried and it is not that, at this stage, a disputed questions of fact or difficult questions of law are to be decided. He thus submits that once it was demonstrated by the appellants by placing on record the registered sale deed of the year 1957 then the existence of serious question which requires trial has been proved, hence, establishing prima facie case. However, the trial court has acted with predisposition of mind it has recorded in para 11 of the impugned order that at this stage this cannot be said that the sale deed in question is forged. He thus submits that this recording in para 11 indicates about the mindset of the court, he submits that the court has not considered the case of the appellant/plaintiff in right perspective. He points out towards NOC issued by the Nazul department dated on 30.07.1978 and submits that no consideration of that NOC has been made by the learned trial court while passing the impugned order. It has also been stated that the relevant facts have not been considered.

12. Learned counsel for the appellants submits that once it was established that the sale deed was executed then in all fairness the possession of the appellants/plaintiffs should have been protected. In view of his possession not only his prima facie case is established but balance of convenience is also in his favour as, if the construction is raised then he will not be able to take back the possession of the suit property in the same condition as it was on the date of filing of the suit. He thus prays for setting aside the impugned



order and for allowing their application for temporary injunction.

13. Per contra, learned counsel for the respondent No.6 by referring to para 13 and 14 of the impugned order submits that the Court has considered that the originally the property belonged to Himmatmal whose name was recorded in the revenue entries of 1950 to 1951 for survey No.3215 which is the survey number of suit property. After his name, in 1961-1962 the name of Nagarpaalika Aabadi Bhumi was recorded, thereafter, in 1965-1966 the name of temple has been recorded. It has also been considered by the trial court that in the revenue record from 1919-1920, 24-25, 67-68 and Samvat 2023 and Samvat 27-29, same entries regarding temple are mentioned which goes to demonstrate that the name of the temple of Bhuteshwar Mahadev is mentioned in the revenue record. from 1965-1966 on wards. Thus, the trial court has correctly concluded, as per the submission of the learned counsel for the respondent No.6, that there is no prima facie case of the appellants, hence, it has correctly rejected the application.

14. Learned counsel for the respondent No.6 further points out that the appellant himself has filed the Nazul NOC of the year of 1978. A close scrutiny of the said Nazul NOC would provide that for the east side in the said NOC it has clearly been mentioned that "Kuaa va Shankar Ji Kaa Chabutara". He thus submits that the existence of temple is even recorded in the Nazul NOC which the appellants themselves are relying. He further points out that in the year of 2008 NOC for construction was given which demonstrates continuous possession of the temple on the said suit property. He then refers to the affidavit of the plaintiff/appellant No.1 which he has



submitted in support of his application filed before the revenue authorities in support of his application for mutation. He submits that in para 4 of the affidavit the plaintiff/appellant No.1 has stated that he came to know about the sale deed dated 22.01.1957 while searching the documents in the suitcase of his mother after her death. As such, he points out that the plaintiff No.1 himself has stated in the affidavit that he came to know about the sale deed only on 11.08.2023 which clearly establishes the fact that the plaintiff never remained in possession of the suit property because as per their own story they were not aware of the sale deed before 11.08.2023.

15. Learned counsel for the respondent No.6 further submits that a perusal of the sale-deed dated 22.01.1957 would show that it neither has any survey number nor the clear situation of the suit property. The map which is on record would show that the suit property is towards Imaam Baada which is very far from the temple of Bhuteshwar Mahadev temple. He also points out that in support of his case the appellant has filed an affidavit of one Narendra Kothari, who later on filed an affidavit in favour of defendants and has submitted that the plaintiffs have got the affidavit signed without informing about the same as such the only independent witness has repudiated his earlier affidavit.

16. Learned counsel for the respondent Nos.1 to 4 repeated the arguments of the learned counsel for the respondent No.6. He further submitted that there is an order on record which was passed on 20.01.1990 in Civil Suit No.7A/1990 by the 3rd Civil Judge, Class-II, Shajapur whereby possession of the temple was recorded for the suit property. He thus submits that the



plaintiff/appellant miserably failed to demonstrate their prima facie case. He also refers to the findings recorded by the learned trial court in para 11 and 12 of the impugned order and submits that the appellants/plaintiffs failed to prove that there existed any dilapidated building on the suit property. There was no document regarding possession of the plaintiffs on the suit property. As such the learned trial court has correctly rejected the application of the plaintiff.

17. In rejoinder submissions, learned counsel for the appellants points out that in the plaint clarification with respect to wrong mention of the east side of the suit property has already been pleaded, thus, this could not have been a ground for rejection of the application filed under Order 39 Rules 1 and 2 of CPC.

18. Heard the learned counsel for the parties and perused the record.

19. Learned counsel for the appellants have placed reliance on the judgment of **Shankarlal (supra)** which provides for contours of consideration for protection under Order 39 Rules 1 and 2 of CPC. Learned counsel has emphasized only on one aspect of the matter i.e. existence of the prima facie case, however, the said order provide all three ingredients for issuance of temporary injunction i.e. not only prima facie case but also the existence of irreparable loss and balance of convenience.

20. In the present case, a bare perusal of plaint would show that in para 10, the plaintiffs/appellants have strenuously tried to explain and wash away the evil effect of wrong mention of the description of east side of the suit property. In fact, this mention of east side supports the case of the



defendants/respondents. This Court cannot remain oblivious of the fact that the sale deed in favour of Lakhmichand Ji was executed on 27.01.1957 and since then there is no efforts made by any of the parties to get their names entered in the revenue/municipal record. Also in 1985 and then in 2008 renovation of the temple was done. In the facts of the present case, the possession of the plaintiffs/appellants was not established on the suit property. It is not only the existence of prima facie case but balance of convenience is also completely absent in the present case. As the respondents have demonstrated the possession of the temple and the photographs which are brought on record by the appellants themselves would show that to a large extent the construction has already been made. As such, at this stage, the balance of convenience lies in the favour of the respondents/defendants.

21. Significantly, the appellant himself has filed the Nazul NOC of the year of 1978 in which it is clearly mentioned that on the east side there is "Kuaa Va Shankar Ji Kaa Chabutara". As such, even in the Nazul NOC which the appellants themselves are relying existence of temple is recorded. Apart from this, in the affidavit of the plaintiff/appellant No.1 which he has submitted in support of his application filed before the revenue authorities in support of his application for mutation it was stated in para 4 that he came to know about the sale deed on 11.08.2023 while searching the documents in the suitcase of his mother after her death. This averment in the affidavit, prima facie, establishes the fact that the plaintiff never remained in possession of the suit property because as per their own story they were not aware of the sale deed before 11.08.2023.



22. The other cases relied by the learned counsel for the appellant i.e. **Nirmala J. Jhala Vs. State of Gujrat and another**, 2013 (4) SCC, 301 provides in para 8 as under:-

*"8. Ms. Mahalakshmi Pavani, learned counsel appearing for the appellant, has submitted that one Gautam Ghanshyam Bhai Jani, an officer of Oriental Insurance Company at Mehasana had been involved in a CBI case for the offence punishable under [Sections 406](#), [467](#) and [471](#) of Indian Penal Code, 1860. After investigation, a chargesheet had been filed against him in the court of the Chief Judicial Magistrate, Mirzapur in case no.5 of 1991. Shri Bhatt, the then CJM had liberally granted long adjournments to the accused complainant. The case had started in 1991, but no progress was made till 1993, as the accused-complainant had only been seeking adjournments. The appellant had joined in the said Court as CJM in 1993, and wanted to conclude the trial, thus, she granted short adjournments. The accused/complainant was being represented by Shri Pankaj Pancholi, Advocate. He had been granted adjournments one or two times, but later on, the appellant refused to accommodate him. She hence, began examining witnesses even in the absence of the complainant's advocate. The complainant was directed/ instructed to keep his advocate present, and in the event that Shri Pankaj Pancholi was not available, to make alternative arrangement. Shri Pankaj Pancholi introduced the accused-complainant to Shri C.B. Gajjar, Advocate practicing therein. Shri Pankaj Pancholi told Shri Gajjar that as the accused-complainant was his relative, he was not in a position to ask the accused to pay fees. Thus, Shri Gajjar should ask the accused-complainant to pay a sum of Rs.20,000/- to be paid to the appellant, in order to get a favourable order. The appellant did not meet Shri Gajjar in her chamber, nor did she put up any demand. The complaint, however, was motivated as the appellant was a very strict officer. This theory of demand/bribe and further, the readiness to accept the same in installments, was a cooked up story. The findings of fact recorded by the Enquiry Officer are perverse, as Shri Gajjar, Advocate has denied meeting the appellant in her chamber. The High Court did not appreciate the evidence in correct perspective and failed to protect a honest judicial officer, which was its obligation. The punishment imposed is too severe and disproportionate to the delinquency. Therefore, the appeal deserves to be allowed"*

23. There is no quarrel with this proposition of law, however, while considering the question of exercise of powers in appellate jurisdiction under Order 43 Rule 1 (r), the Hon'ble Apex Court in the case of **Ramakant Ambalal Choksi (supra)** in para 20, 21, 30 and 31 has held as under:-

*"20. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court*



*in Wander Ltd. v. Antox India (P) Ltd. [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727] Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial Judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:*

*(a) First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and*

*(b) Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trade mark on which the passing off action is founded.*

*21. With regards to (a), this Court held thus: (Wander case [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727], SCC p. 733, para 14)*

*“14. ... In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. ... The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below.... If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”*

*30. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. reported in (2019) 3 SCC 381, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.*

*31. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well-settled principles governing the scope of jurisdiction of the appellate court under Order 43CPC which have been reiterated in various*



*other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in Wander case [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727].*

24. In view of the above analysis of the fact and on applying the above referred position of law in the present case, this Court is of the considered view that there is no perversity or failure of exercise of jurisdiction by the trial court while rejecting the application of the appellant filed under Order 39 Rules 1 and 2, hence, no interference is warranted in the same. Consequentially, the appeal fails and is hereby dismissed.

25. No orders as to costs.

(PAVAN KUMAR DWIVEDI)  
JUDGE

N.R.