

**Court No. - 6**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 5782 of 2023

**Petitioner :-** Neelam Shukla And 3 Others

**Respondent :-** Balika Shukla And 2 Others

**Counsel for Petitioner :-** Samarth Saxena, Durgesh Kumar Shukla

**Hon'ble Rajnish Kumar, J.**

1. Heard Shri Samarth Saxena, learned counsel for the petitioners.
2. This petition has been filed challenging the order dated 01.09.2023 passed in Civil Appeal No.6 of 2020; Balika Shukla and Others Vs. Neelam Shukla and Others, by the Additional District Judge, Court No.1, Lakhimpur Kheri, by means of which the appeal has been allowed and the order dated 07.02.2020 passed by the trial court in Regular Suit No.1158 of 2018 has been set aside and the parties have been directed to maintain status quo in regard to the land in dispute.
3. Learned counsel for the petitioner submits that the husband of the petitioner Shri Naveen Shukla was recorded tenure holder of the land in dispute and in possession of the house in question. After his death the petitioner came into possession and her name was recorded in PA-11. The respondents filed Regular Suit No.1158 of 2018 for permanent injunction on the ground that the petitioner no.1 has remarried with one Shri Anshu, therefore she has lost her rights in the property of her husband Shri Naveen Shukla and the respondents, being sisters of Shri Naveen Shukla, are entitled for the property in question, whereas the petitioner no.1 has not remarried. The petitioner filed a written statement and reply in suit denying the remarriage of the petitioner and considering the same the application for interim injunction was rightly and in accordance with law rejected by the trial court by means of the order dated 07.02.2020. He further submits that the respondents filed a Civil Appeal No.6 of 2020 against the said order. The petitioner filed an objection against the appeal. But without considering

the same, the appeal has been allowed and the interim injunction has been granted by the appellate court, therefore the impugned order is not sustainable in the eyes of law.

4. He further submits that the findings recorded by the trial court could not have been interfered with only because two views are possible. He relies on **Esha Ekta Apartments CHS Limited Vs. Municipal Corporation of Mumbai and Another; (2012) 4 SCC 689** and **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association SCI CINOD Secretariat, Madras;(1992)3 SCC1.**

5. On the basis of above, learned counsel for the petitioners submits that the impugned order is liable to be set aside and this petition is liable to be allowed.

6. I have considered the submissions of learned counsel for the petitioners and gone through the material placed on record of this petition.

7. As borne out from the pleadings, the recorded tenure holder of the land in dispute was the father of the respondents and husband of the petitioner no.1 Shri Naveen Shukla, Shri Vidya Ram son of Devta Deen, who died on 28.10.2017. Thereafter the husband of the petitioner no.1 and the brother of the respondents died in an accident on 24.02.2018. Thereafter, the name of the petitioner no.1 was recorded, being widow of late Naveen Shukla under PA-11 on 09.03.2018. It appears that thereafter the petitioner no.1 remarried to one Shri Anshu son of Babu Ram. The Regular Suit No.1158 of 2018 for permanent injunction has been filed by the respondents. The specific plea has been taken by the respondents on the basis of Paper No.39-C filed before the trial court that the petitioner no.1 has remarried to Anshu, therefore she has lost her right in the land in dispute and entry dated 09.03.2018 in PA-11 has been stayed by the Tehsildar- Dharaura on 18.07.2018. Though remarriage has been denied by the petitioner no.1 in the objection but no specific denial has been made. The petitioner no.1 claims that Anshu is the relative of the petitioner but the relation has not been disclosed. The trial court rejected the application for interim injunction by means of the order dated 07.02.2020 on the ground that the respondents i.e. the plaintiffs in the suit have failed to make out a prima facie case, therefore the balance of

convenience is not in their favour and there can not be any irreparable loss to them.

8. The said order was challenged by the respondents in Civil Appeal No.6 of 2020, against which an objection was also filed by the petitioners. The appellate court, after consider the pleadings and material on record, allowed the appeal on the ground that PA-11 entry made in favour of the petitioners has been stayed by the Tehsildar- Dharaura by means of the order dated 18.07.2018, even then the petitioner no.1 has executed a sale deed dated 30.07.2019 in favour of the petitioner nos.2 to 4 and the petitioner has also remarried with Anshu son of Babu Ram, which has not specifically been denied by the petitioner no.1. This finding has been recorded on the basis of Paper No.39-C filed before the trial court, which is a Matratva Evam Bal Suraksha Card (MCP Card) showing Neelam Shukla wife of Anshu.

9. In the objection filed before the trial court, the petitioner no.1, though has denied the remarriage but it has not specifically been denied and even after stating that Anshu is her relative, the relation has not been disclosed. However in the objection filed before the appellate court this plea has also not been taken and only a plea has been taken that false and forged charge has been levelled after removing the name of the husband of the petitioner Naveen Shukla and mentioning the name of Anshu. The fact of execution of sale deed dated 30.07.2019, in spite of the stay of PA-11 entry by means of the order dated 18.07.2018 by the Tehsildar- Dharaura, has also not been denied by the petitioner, therefore, it is apparent that the petitioner no.1 has executed the sale deed in favour of the petitioner nos.2 to 4 despite the stay of PA-11 entry in her favour, whereas she could not have done so, therefore this Court is of the view that the appellate court has not committed any illegality or error in passing the impugned order dated 01.09.2023, allowing the appeal and granting the interim injunction which is necessary in the facts and circumstances of the case to save the property in dispute and avoid multiplicity of litigation in future, on the basis of the pleadings and material on record.

10. So far as the argument advanced by the learned counsel for

the petitioners that if two views are possible, the appellate court can not set aside the order passed by the trial court and take different view, this Court is of the view that after the stay of PA-11 entry in favour of the petitioner no.1, the fact which has been considered by the trial court in its order dated 07.02.2020 but no finding has been recorded in this regard, no other view is possible except that the petitioner no.1 could not have proceeded even to execute the sale deed of the property in dispute or it's any part because the PA-11 entry is not operative on account of stay, even thereafter, the petitioner no.1 has executed the sale deed in clear violation of the interim order passed by the Tehsildar.

11. The Hon'ble Supreme Court, in the case of **Esha Ekta Apartments CHS Limited Vs. Municipal Corporation of Mumbai and Another (Supra)**, relied by the learned counsel for the petitioners, has relied on the judgement passed in the case of *Wander Ltd. Vs. Antox India (P) Ltd* 1990 Supp SCC 727, in which the Hon'ble Supreme Court has held that in such appeals, the appellate court will not interfere with the exercise of discretion of the court of 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 paragraphs 19 and 20 of **Esha Ekta Apartments CHS Limited Vs. Municipal Corporation of Mumbai and Another (Supra)** is extracted below:-

*"19. We have considered the respective submissions and carefully scrutinized the record. The scope of the appellate court's power to interfere with an interim order passed by the court of first instance has been considered by this Court in several cases. In Wander Ltd. v. Antox India (P) Ltd, the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondents prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations: (SCC p. 733, para 14)*

*"14.... In such appeals, the appellate court will not interfere with the exercise of discretion of the court of 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. An appeal against exercise of discretion is said*

*to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. 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.*

*20. In Skyline Education Institute (India) (P) Ltd. v. S.L. Vaswani<sup>2</sup>, the three-Judge Bench considered a somewhat similar question in the context of the refusal of the trial court and the High Court to pass an order of temporary injunction, referred to the judgments in Wander Ltd. v. Antox India (P) Ltd., N.R. Dongre v. Whirlpool Corpn. and observed: (S.L. Vaswani case, SCC p. 153, para 22)*

*"22. The ratio of the above noted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate, court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.>*

12. The Hon'ble Supreme court, in the case of **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association SCI CINOD Secretariat, Madras (Supra)**, relied by the learned counsel for the petitioners, has held in paragraph 10 that 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.

13. In view of above, the stay of PA-11 entry in favour of the petitioner no.1, would not be operative from the date of grant of stay order. Thus, the petitioner no.1 could not have transferred the part of the land in dispute on the basis of PA-11 entry

because the rights accrued to the petitioner no.1 on the basis of the said entry stands suspended but the petitioner no.1 has executed the sale deed in favour of the petitioner nos.2 to 4, therefore there is apprehension that the petitioner no.1 may further create third party rights on the land in dispute, therefore the said property is required to be protected to avoid the multiplicity of the litigation also in future. The respondents have also challenged the sale deed executed by the petitioner no.1 in favour of the petitioner nos.2 to 4 by way of an amendment in the pending civil suit. This Court is of the view that the interim injunction has rightly and in accordance with law has been granted by the appellate court by means of the impugned order dated 01.09.2023.

14. In view of above and considering the over all facts and circumstances of the case, this Court is of the view that the impugned order dated 01.09.2023 has rightly and in accordance with law has been passed by the appellate court considering the prima facie case, balance of convenience and irreparable loss, which may be caused to the respondents in case the injunction is not granted and there is no illegality or error in it, which may call for any interference by this Court. This petition is misconceived and lacks merit.

15. The petition is, accordingly, **dismissed**. No order as to costs.

**(Rajnish Kumar, J.)**

**Order Date :- 17.11.2023**

Haseen U.