

**HIGH COURT OF JAMMU AND KASHMIR
JAMMU**

**Pet.u/w 104 No. 34/2012
CMA. No. 36/2012**

Date of order: March 15, 2013

Sandeep Kumar and Ors.

Vs.

Madan Kumar Dubey and Ors.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

1. Whether approved for Law Journal? Yes

2. Whether approved for publication in Press?

Appearing counsel:

For Petitioner (s) : Mr. V.R.Wazir, Sr. Adv, with
Mr. Abhishek Wazir, Adv.

For respondent(s) : Mr. B.L.Kalgotra, Adv,
(Oral)

Appellants instituted a civil original suit for permanent prohibitory injunction against the respondents. In that suit, the learned Trial Court issued a temporary injunction order, restraining the respondents from interfering into the possession of the appellants in respect of the suit property. The respondents also instituted civil original suit against the petitioners.

The respondents challenged the order passed by the 1st Additional Munsiff, Jammu by filing an appeal, which appeal has been decided by the 1st Additional District Judge, Jammu vide its Order dated 04th

September, 2012, whereunder, the order of the Trial Court has been set-aside and parties have been directed to maintain status-quo on spot with regard to the ownership and possession of the suit land. The Appellate Court also directed for trial of both the suits by the court of Sub Judge, Jammu.

The learned Trial Court had recorded prima-facie findings about the possession and thereafter issued order of injunction, restraining the respondents from interfering into the possession of the petitioners pending disposal of the suit. The Appellate Court set-aside that order, but simultaneously directed for maintenance of status-quo in respect of the ownership and possession of the suit land.

The order for maintaining status-quo could have not been passed by the Appellate Court without recording prima-facie findings about the possession. The Appellate Court's order is bound to give rise to law and order problem on spot, for the reason that both the parties are claiming to be in possession of suit property to the exclusion of each other. The status-quo order, in such circumstances, will create more problems than solving the same.

The Courts can grant or refuse the temporary injunctions only after recording findings about prima-facie case, balance of convenience

and irreparable injury. The impugned order does not take care of any of these cardinal principles of law for grant or refusal of temporary injunctions.

Learned counsel for the parties after arguing for a while submitted that in view of the observations of this Court, the impugned order be set-aside and the Appellate Court be directed to re-hear the matter and pass orders in accordance with law and in the light of the observations made in this order.

For the above stated reasons, the order passed by the Appellate Court is set-aside to the extent, it directs for maintenance of status-quo with regard to the ownership and possession of the suit land. The Appellate Court to record prima-facie findings in respect of possession and thereafter direct for maintenance of status-quo. The Appellate Court will be at liberty, on rehearing the matter, to pass any other appropriate order, which it may deem, just and proper in the circumstances of the case.

Disposed of in the above terms.

Record be sent back. Parties to appear before the Appellate Court on 25th March, 2013.

(Muzaffar Hussain Attar)

Judge

Jammu
March 15, 2013

Shamim Ahmad

