

**Serial No. 01**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

CRP No. 18 of 2018

Date of order: 28.09.2018

Md. Saquib & Anr.

Vs.

Md. Ilyas & Ors.

**Coram:**

**Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. A.S. Siddiqui, Adv.

For the Respondent(s) : Mr. S.P. Mahanta, Sr. Adv. (For R 4 - 7)  
Mr. R. Choudhury, Adv. (For R 1 - 3)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

**Oral:-**

1. Alongside Title Suit No. 10 (H) 2018, an application for grant of interim relief was filed by the petitioners registered as MC No. 26 (H) 2018. Learned trial court in *ex parte* had granted the interim relief by directing "status quo" to be maintained regarding the subject matter of the suit. The said application came up for consideration before the learned trial court on 07.09.2018, the respondents (non-applicants therein) had not filed their objections but had made a verbal submissions whereby, it has been brought to the notice of the learned trial court that earlier two title suits, one bearing T.S. No. 4 (H) 2009 and another T.S. No. 18 (H) 2009 are pending. In MC No. 26 (H) 2018 it has been observed as under;

"It is an admitted position now that preliminary decree dated 05.05.2016 still stand operative and not challenged and the suit property in dispute in T.S. No. 4 (H) 2009, T.S. No. 18 (H) 2009 and T.S. No. 10 (H) 2018 is the same which is the right side ground floor, first floor and second floor of the right side of the suit property."

"In view of the existence of preliminary decree dated 05.05.2016 drawn by the predecessor in respect of the suit property and the above discussion this court is not inclined to extend the interim order dated 28.08.2018 and the same stands vacated."

“Opposite parties to file their show cause on the next date positively.”

2. Petitioners (plaintiffs) aggrieved by the said order have filed the instant petition under Article 227 of the Constitution of India. The maintainability has been questioned on the ground; that the petitioners have two efficacious remedies available (i) application before the learned trial court for modification of interim relief under Order 39 Rule 4 CPC and, (ii) to file appeal under Order 43 CPC.

3. Supporting his contention, learned counsel for the respondents placed reliance on a judgment rendered by the Hon’ble Apex Court in **(2018) 3 SCC 85**. Paragraph 12 of the judgment is relevant to be quoted:

“12. The same view was reiterated in *Kanaiyalal Lalchand Sachdev v. State of Maharashtra*<sup>10</sup>, observing: (SCC p. 789, para 23)

“23. In our opinion, therefore, the High Court rightly dismissed<sup>11</sup> the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*<sup>12</sup>, *Surya Dev Rai v. Ram Chander Rai*<sup>13</sup> and *SBI v. Allied Chemical Laboratories*<sup>14</sup>.”

4. It appears that the learned trial court while noticing that preliminary decree, passed on the basis of the settlement arrived at between the parties to T.S. No. 4 (H) 2009 and T.S. No. 18 (H) 2009 exist, therefore, order of status quo has not been extended as it will have effect the preliminary decree. The learned trial court then asked the opposite parties to file a show cause, either the learned trial court should have waited for the show cause or otherwise, should have disposed of the application finally. Be that as it may, the fact of the matter is that the order is still open to be modified after considering the show cause to be filed by the respondents (non-applicants therein). Then again, the aggrieved party has the right to file an appeal against the order as shall be passed by the learned trial court. The order of the status quo has been operative from 28.08.2018 so should have allowed it to continue for a weeks’ time more so as to finalise the disposal of the application. It shall be open for

10. (2011) 2 SCC 782; (2011)1 SCC (Civ) 570.

11. *Kanaiyalal Lalchand Sachdev v. State of Marashtra*, 2009 SCC OnLine Bom 2388.

12. (2003) 3 SCC 524; 2003 SCC (Cri) 762.

13. (2003) 6 SCC 675.

14. (2006) 9 SCC 252

the petitioners to seek further protection if required from the learned trial court.

5. The respondents (non-applicants therein) have not filed their objections. Learned counsel present on their behalf assures filing of the same latest by Monday i.e., 01.10.2018. The learned trial court shall hear both the parties and pass final order regarding MC No. 26 (H) 2018 positively within a weeks' time.

6. The suit is stated to be fixed for further proceedings by the learned trial court on 11.10.2018, the date shall stand rescheduled. The learned trial court shall take up the matter on 01.10.2018 to enable the respondents to file their objections and then, shall decide the application within a weeks' time positively.

7. Meanwhile, any further proceedings sought for by the respondents shall await the result of the application. The respondents No. 4 to 7 are not party (defendants) in T.S. No. 10 (H) 2018. With the consensus of the learned counsel for the parties they shall stand impleaded as party defendants in the said suit. Learned trial court shall update the cause title of the suit accordingly.

8. Disposed of as above.

9. Registry to send copy of the order to the learned trial court today itself for information.

**(Mohammad Yaqoob Mir)**  
**Chief Justice**

Meghalaya  
28.09.2018  
"Sylvana PS"