(1)
(Order-sheet during Corona period)

Case called out. None responds from either side during this Corona period. So fix 05.10.2020 for hearing on substitution application 24C

(2)
(Order-sheet during Corona period when only one party or his counsel is present)

Case called out. Only plaintiff with his counsel appears. None responds from the side of the defendants during this Corona period. So fix 05.10.2020 for hearing on amendment application 18A 2 .

(3)
(Order-sheet when advocates on strike or abstaining from work)

Case called out. Both the parties are present but the advocates are today abstaining from judicial work. So fix 11.10.2020 for hearing on substitution application 22A2. Plaintiff has moved application 23C2 for extension of ex
parte temporary injunction till the next date fixed. 23C2 is allowed. Ex parte temporary injunction is extended up to 11.10.2020.

(4)
(Order-sheet when advocates on strike or abstaining from work)

Case called out. None present for either side. Advocates are today abstaining from judicial work. So fix 11.10.2020 for hearing on substitution application 22A2. Defendants and the legal representatives mentioned in 22A2 may file their objections against 22A2 by the date fixed.

(5)
(Order on adjournment application when not opposed by other side)

Case called out. Both the parties are present with their counsel. Case is today fixed for hearing on interim injunction application 6C 2 . Defendants have moved adjournment application 18-D seeking time for filing objections against 6C2. Plaintiff has no objection. Heard.

18-D is allowed. Fix 16.09.2020 for hearing on 6C 2 . Defendants may file their objections against 6C 2 by the date fixed.

(6)
(Order on adjournment application when opposed by other side)

Case called out. Both the parties are present with their counsel. Case is today fixed for hearing on interim injunction application 6C 2 . Defendants have moved adjournment application 18-D seeking time for filing objections against 6C 2 . Plaintiff's counsel has strongly opposed the adjournment application 18-D. Heard.,Adjournment application 18-D is allowed at a cost of Rs. 50/- (Rs. fifty only). Fix 16.09.2020 for hearing on 6C 2 . Defendants may file their objections against 6C 2 by the date fixed

(7)
(Order on adjournment application when opposed by other side and extention of ex-parte injunction till next date)

Case called out. Both the parties are present with their counsel. Case is today fixed for hearing on interim injunction application 6C 2 . Defendants have moved adjournment application 18-D seeking time for filing objections against 6C 2 . Plaintiff's counsel has strongly opposed the adjournment application 18-D. Heard. Adjournment application 18-D is allowed at a cost of Rs. 50/- (Rs. fifty only). Fix 16.09.2020 for hearing on 6C 2 . Defendants may file their objections against 6C 2 by the date fixed. Application 19C 2 has been moved by plaintiffs for extension of ex-parte temporary injunction. 19C 2 is allowed. Ex-parte temporary injunction is extended upto next date fixed.

(8)
(Order on adjournment application when not opposed by other side and extention of ex-parte injunction till next date)

Case called out. Both the parties are present with their counsel. Case is today fixed for hearing on interim injunction application 6C 2 . Defendants have moved adjournment application 18-D seeking time for filing objections against 6C2. Plaintiff has no objection. Heard.

18-D is allowed. Fix 16.09.2020 for hearing on 6C 2 . Defendants may file their objections against 6C 2 by the date fixed. Application 19C 2 has been moved by plaintiffs for extension of ex- parte temporary injunction. 19C 2 is allowed. Ex-parte temporary injunction is extended upto next date fixed.

(9)
(Order issuing summons to defendants for filing written statement)

Case called out. Plaintiffs and defendant no. 3 Ramesh Kumar are present with their counsel. None is present for the remaining defendants no. 1,2,4 and 5 nor they are sufficiently served so far. So issue summonses to the defendants no. 1,2, 4 and 5 through process server and registered post as well fixing 22.10.2020 for written statement and 30.10.2020 for issues. Plaintiffs are directed to take steps within three days.

(10)
(Notice to party or his counsel under Rule of the G.R.C.O.Civil)

Case called out. Only defendants' counsel is present. None responds for the plaintiffs. Case is today fixed for hearing of amendment application 18A 2 . It is revealed from perusal of the order sheets that the present suit was received by transfer in this court on 10.12.2019 vide transfer order dated 08.12.2019 passed by the learned District Judge, Allahabad but no notice in compliance with the mandatory provisions of Rule 89-A(4), G.R. (Civil) appears to have been issued to the parties or their counsel by this court. So the office is directed to issue notice to the counsel for the plaintiffs under Rule 89-A (4) of the G.R. (Civil) fixing 08.10.2020 for hearing on amendment application 18A 2 . Defendants may file their objections against 18A 2 by the dated fixed if not already filed.

(11)
(Rejecting injunction application 6C2 in the absence of plaintiff)

Case called out at different intervals upto 2.45PM. Only defendants with their counsel are present. None responds for the plaintiffs upto 2.45 PM nor any adjournment application has been moved on their behalf. Case is today fixed for hearing on interim injunction application 6C 2 . None is present for the plaintiffs to

press 6C 2 . So application 6C 2 is rejected in default of the plaintiffs and their counsel. Fix 26.10.2020 for framing of issues.

(12)
(Order on application of plaintiffs seeking recall of order whereby their injunction application was rejected in their absence)

Case called out. Both the parties are present with their counsel. Case is today fixed for framing of issues. Plaintiffs have moved application 19C 2 accompanied by affidavit 20C 2 with the prayer to recall the order dated 07.09.2020 whereby their interim injunction application 6C 2 was rejected on 07.09.2020 in their default. The learned counsel for defendants says that he will not file any written objection against 19C 2 but opposes 19C 2 for heavy cost. Heard. As stated in the application 19C 2 and in the accompanying affidavit 20C 2 , plaintiffs could not attend the court on 07.09.2020 as one of their family members had taken seriously ill. The said fact has not been controverted by the defendants. So the application 19C 2 is allowed in the interest of justice at a cost of Rs. 100/- (Rs. One Hundred Only). Order dated 07.09.2020 is recalled. Fix 06.11.2020 for hearing on 6C 2 .

(13)
(Dismissal of suit in absence of plaintiff)

Case called out repeatedly at different intervals. None responds for the plaintiffs. Only defendants' counsel is present. Case is today fixed for framing of issues. Suit is dismissed in default of the plaintiffs and their counsel. Let the record be consigned to the record room.

(14)
(Order directing suit to proceed ex-parte in absence of defendants)

Case called out repeatedly at different intervalsupto 2.45PM. Only plaintiffs' counsel appears. None responds for the defendants. Case is today fixed for framing of issues. Case is directed to proceed ex-parte against the defendants. Fix 02.11.2020 for ex-parte evidence of the plaintiffs. Plaintiffs may file their ex-parte evidence by means of affidavit under Order 19, rule 1-A CPC.

(18)
(Order-sheet when case was fixed for some holiday)

10.10.2020: Second Saturday
11.10.2020: Sunday
12.10.2020: File produced today. Called out. Parties are present with their counsel. Case is today fixed for evidence of plaintiff. Plaintiff has moved adjournment application 55-D on the ground that his witness Ram Prakash has taken ill and could not come to the court today for that reason. Consel for defendant has opposed 55-D. Heard. Application 55-D is allowed at a cost of Rs. 50/-. Fix 26.10.2020 for evidence of plaintiff.

(19)

(ex- parte ad interim injunction order under Order 39, rule 3 CPC)

OS No. 218/2020

Ram Pratap Singh & Others

. .....Plaintiffs

Versus

Suresh Pratap Singh & Others

.....Defendants

ORDER

Plaintiffs Ram Pratap Singh and others have instituted the present suit seeking permanent injunction and have moved application 6C2 under order 39, rules 1 and 2 CPC seeking ex parte ad interim injunction against the defendants. Heard the learned counsel for the plaintiffs and perused the record. As stated in the plaint, interim injunction application 6C2 and the accompanying affidavit 7C2, plaintiffs are the Bhumidhars and owners in possession of the disputed agricultural land bearing khasra No. 108, measuring 8 viswas, situate in village: Phaphamau, district: Allahabad and their names are recorded as such in the revenue records. Defendants have no right or possession over the land in dispute. The plaintiffs have installed a tube well on their said land for the last ten years and have got a drainage constructed towards north of their said land for irrigating their fields. Defendants are threatening to dismantle the aforesaid drainage of the plaintiffs and annex its land to their adjoining khasra No. 140 and have ever since 12.09.2020 attempting to dismantle the said drainage with the help of their labourers. The plaintiffs have somehow managed not to allow the defendants to succeed in their said attempt but they are throughout threatening to dismantle the aforesaid drainage and annex its land to their adjoining field. The plaintiffs have

filed up-to-date khasra and khatauni paper numbers 11C2 and 12C2 of the disputed land vide list 10C2 and affidavit 7C2 in support of their aforesaid statements which go to show a prima facie case in favour of the plaintiffs. In case an ex parte ad interim injunction is not granted, then not only the very object of the suit and the injunction application will stand frustrated but irreparable injury would also be caused to the plaintiffs. In view of the above facts and circumstances of the case, balance of convenience is also found to be in favour of the plaintiffs. So issue notice to the defendants inviting objections by fixing 27.09.2020 for hearing on 6C2. The defendants are meanwhile restrained up to 27.09.2020 from dismantling the said drainage and annexing the plaintiffs' land to their adjoining field. Plaintiffs are directed to comply with the provisions of the Proviso to rule 3 of Order 39 CPC forthwith.

(20)
(Issuing notice to defendants instead of passing ex-parte ad interim injunction under Order 39, rule 3 CPC)

Plaintiff has instituted the present suit for permanent prohibitory injunction against the defendants. By means of application 9C2 moved under Order 39, rule 3 CPC, plaintiff has sought for ex parte ad interim injunction against the defendants. Heard the learned counsel for the plaintiff and perused the record. As stated by the plaintiff in the plaint, temporary injunction application 6C2 and the accompanying affidavit 7C2, plaintiff had purchased the disputed plot bearing Gata No. 26, measuring 200 sq. meters, situated in Town: Jhunsi, Tehsil: Sadar, District: Prayagraj from its erstwhile owner Ramesh Chandra by means of registered sale deed dated 16.07.2017 and since then plaintiff alone is in possession of the said land as its sole owner. A few days back, when the plaintiff was digging in the said land for laying foundation and construction of his house, officers of the Prayagraj Development Authority, Prayagraj appeared on the spot and stopped the digging of foundation and since then they are not allowing the plaintiff to carry out his said work of foundation and construction of his house. Plaintiff has prayed for issuing ex parte ad interim injunction against the defendants restraining them from interfering in the digging of the foundation for construction of his house on his aforesaid

land. Plaintiff has filed a certified copy of the aforesaid sale deed vide list 8C2 which reveals that he had purchased the said land from its previous owner Ramesh Chandra. Plaintiff has not produced any document to show that he had got the map sanctioned or obtained the permission of the Prayagraj Development Authority, Prayagraj before starting digging of foundation for construction of his house on the said land. No prima facie case and balance of convenience are thus found to be existing in favour of the plaintiff nor any irreparable injury is likely to be caused to the plaintiff for want of an ex parte ad interim injunction. In the facts and circumstances as above, there are no satisfactory grounds for granting ex parte ad interim injunction in favour of the plaintiff without providing opportunity of objections and hearing to the defendants against the injunction application 6C2. So issue notices to the defendants fixing 26.09.2020 for objections and hearing on the injunction application 6C2. Plaintiff is directed to take necessary steps forthwith. Application 9C2 moved by plaintiff under Order 39, rule 3 CPC is disposed of accordingly.

(21)

Reserving order on ex-parte injunction application when suit has been received by transfer from parent court the same day

Record of the present original suit has been received today in this court by transfer from the court of the Civil Judge (Junior Division), West, Allahabad. Plaintiff is present with his counsel. Plaintiff has moved application 8C 2 seeking ex-parte ad interim injunction against the defendants who are yet not served. Heard the learned counsel for plaintiff on 8C 2 . Fix 09.09.2020 for order on 8C 2 .

(22)
(Ex parte temporary injunction to maintain status quo)

Court of Addl. Civil Judge (Junior Division), Court No. 12, Allahabad
O.S. No.218/2020
Mahaveer and Others
..... Plaintiffs
Versus
Ramesh Kumar and Others
. ..... Defendants

Plaintiffs have instituted the present suit against the defendants for the decree of permanent prohibitory injunction. Plaintiffs have moved application 6C 2 along with affidavit 7C 2 seeking ex-parte ad interim injunction against the defendants. Heard the learned counsel for plaintiffs and perused the record. As has been stated by the plaintiffs in the plaint, injunction application 6C 2 and the accompanying affidavit 7C 2 , plaintiffs are the residents of village: Rampur, Tehsil and Pargana: Chayal, district: Allahabad and their ancestral houses and agricultural property are situated there. Plaintiffs and defendants have their houses together with their frontage adjacent to each other and use and occupy the same accordingly. The sehan i.e. frontage of the plaintiffs' house has been shown with the letters A, B, C,D in the map given at the bottom of the plaint. Defendants have no concern with the said sehan of the plaintiffs. But thedefendants are trying to illegally occupy the aforesaid sehan of the plaintiffs and to annex the same to their sehan by constructing a boundary wall thereon and have collected building material like bricks and sand etc. for the purpose. Plaintiffs have prayed to issue ex-parte temporary injunction against the defendants restraining them from occupying the said sehan land of the plaintiffs and constructing boundary wall thereon. Plaintiffs have filed affidavit 7C2 in support of their aforesaid statements and as such a prima facie case in favour of the plaintiffs is found to be existing. As has been shown in the map given at the bottom of the plaint, sehan i.e. frontage of the houses of the plaintiffs and defendants are situate in front of their respective houses under their separate use and occupation. In view of the above facts and circumstances of the case, if the defendants occupy the said sehan land of the plaintiffs and construct the boundary wall thereon, then not only the egress and ingress of the plaintiffs over their sehan land will stand

obstructed but the object of the suit and the interim injunction application 6C2 as well would stand frustrated. The necessary factors like irreparable loss and balance of convenience are thus found to be existing for purposes of granting an ex parte ad interim injunction. So issue notices to the defendants through process server fixing 19.09.2020 for objections and hearing on the injunction application 6C2. Both the parties are meanwhile directed to maintain status quo in respect of the aforesaid disputed sehan land till the date fixed i.e. 19.09.2020. Plaintiffs are directed to comply with the provisions of the Proviso to rule 3 of Order 39 CPC forthwith.

(23)

(Ex parte ad interim injunction against forcible eviction of tenant)

OS No. 218/2020

Ram Pratap Singh

.....Plaintiff

Versus

Suresh Pratap Singh

.....Defendant

Plaintiff Ram Pratap Singh has instituted the present suit against the defendant Suresh Pratap Singh for a decree of permanent prohibitory injunction. Plaintiff has filed application 6C2 under Order 39, rules 1 and 2 CPC and has also sought for issuing an ex parte ad interim injunction against the defendant. Heard the learned counsel for the plaintiff and perused the record. As stated in the plaint, interim injunction application 6C2 and the accompanying affidavit 7C2, plaintiff has been residing as tenant in house No. 118/2, Civil Lines, Allahabad for the last two years. Defendant is the owner and landlord of the said house. A written agreement of tenancy was executed on 12.08.2018 between the plaintiff and the defendant. As agreed between the plaintiff and the defendant in the said agreement of tenancy, plaintiff has been paying Rs. 1500/- per month as rent to the defendant. After expiry of two years period of tenancy as agreed between the parties, the plaintiff requested the defendant to further extend the period of tenancy for one year but the defendant refused and is trying to forcibly evict the plaintiff from the tenanted portion and is also threatening to obstruct the water and electric supply to

the tenanted portion. In support of his aforesaid statements, plaintiff has filed his affidavit 7C2, agreement of tenancy dated 12.08.2018 and the rent receipts issued by the defendant to the plaintiff. As is revealed from the said affidavit, agreement of tenancy and the rent receipts, plaintiff was residing in the said house as tenant of the defendant and despite expiration of the period of tenancy, plaintiff is still residing in the said house. In view of the aforesaid facts of the case and the documents produced by the plaintiff, a prima facie case is found to be existing in favour of the plaintiff. Since the plaintiff is still residing in the aforesaid house, the balance of convenience also exists in his favour. In case the plaintiff is evicted forcibly by the defendant from the said house, the plaintiff will have to suffer irreparable injury. So, satisfactory grounds exist for granting ex parte ad interim injunction in favour of the plaintiff and against the defendant. So invite objections from the defendant by fixing 27.09.2020 for hearing on the injunction application 6C2. Defendant is meanwhile restrained from evicting the plaintiff forcibly from the said house without applying due process of law. Plaintiff is directed to comply with the provisions of the Proviso to rule 3 of Order 39 CPC forthwith.

(25)

(Order when ex -parte ad interim injunction discontinued due to non- extension on previous date/ dates)

Case called out. Learned counsel for both the parties are present. Case is today fixed for hearing on amendment application 35A2 moved by plaintiffs. Learned counsel for defendants has received copy of 35A2 today and has sought for time to file objections against 35A2. So fix 25.10.2020 for hearing on 35A2. Defendants may file their objections against 35A2 by the date fixed. Plaintiffs have today moved application 36C2 with the prayer to extend the ex parte temporary injunction granted earlier in their favour. The learned counsel for the defendants has opposed 36C2. Heard. It is revealed from perusal of the previous order-sheets that ex parte temporary injunction was granted in favour of the plaintiffs and against the defendants on 20.12.2019 by the court of Civil Judge (Junior Division), West, Allahabad and the same was extended from date to date but was not extended further on 05.05.2020 despite an application 32C2 having been moved by the plaintiffs on 05.05.2020. It appears that no order could be passed by the court on

32C2 extending the ex parte temporary injunction due to oversight. Temporary injunction application 6C2 is still pending for hearing and disposal on merits. Considering the aforesaid facts and circumstances, application 36C2 is allowed in the interest of justice. Ex parte temporary injunction granted earlier is again made effective from today upto the next date fixed i.e. 25.10.2020.

(26)
Disposal of Interim Injunction Application on Merits after Hearing both the Parties

Court of Addl. Civil Judge (Junior Division), Court No. 5, Berhampur
OS No. 218/2020
Ram Pratap Singh
.....Plainiff
Versus
Suresh Pratap Singh & Others
.....Defendants
Disposal of Interim Injunction Application 6C2

ORDER

Plaintiff Ram Pratap Singh has instituted the present suit against the defendants Suresh Pratap Singh & Others for the decree of permanent prohibitory injunction. Plaintiff has filed application 6C2 under Order 39,rules 1 and 2 CPC with the prayer to grant interim injunction restraining the defendants from interfering into his peaceful possession over the disputed sehan land, encroaching and constructing boundary wall thereon.

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

3. As has been stated in the plaint, interim injunction application 6C2 and the accompanying affidavit 7C2, the plaintiff has been in possession of the land situate in front of his main door since long and has been using the same for various purposes. The plaintiff has his animal pots and a thatched baithaka in the said sehan land. House of the defendants is situated adjacent towards north of the plaintiff’s house. Defendants have no right and title in the disputed land and are in no way concerned to the disputed sehan land. The defendants have been trying to encroach upon the disputed land and annex the same to their sehan land by constructing a

boundary wall thereon. The defendants collected bricks, cement and labourers recently on the spot to construct the boundary wall on the disputed land. On resistance being offered by the plaintiff and intervention of the villagers, the defendants could not succeed in constructing the boundary wall but they are continuously threatening to forcibly occupy the disputed land and annex it to the sehan land of their main door by erecting a boundary wall on it. The plaintiff by means of his injunction application 6C2 has prayed for issuing interim prohibitory injunction restraining the defendants from interfering into his peaceful possession over the sehan land in dispute, encroaching and constructing boundary wall on it during the pendency of the present civil suit.

4. The defendants have contradicted the aforesaid statements of the plaintiff and have opposed the injunction application 6C2 by filing 42their written statement, objection 18C2 and counter affidavit 19C2. The stand taken by the defendants is that both the parties are the descendants of a common ancestor. The plaintiff and the father of the defendants had reached an agreement in the past that the plaintiff would give away the disputed sehan land to the father of the defendants and in lieu thereof would accept land in equal area from the defendants' bhumidhari Gata No. 42 situate in village: Bikarupur. Honouring the said agreement, the father of the defendants gave away the part of his said bhumidhari land to the plaintiff but the plantiff did not allow the defendants' father to take possession of the disputed sehan land as agreed between them. The defendants state that as per the said agreement between the plaintiff and the defendants' father, the defendants are the sole owner of the disputed sehan land and the plaintiff has lost his rights and title in the aforesaid said land under the agreement reached between him and the defendants' father in the past.

5. As is evident from the aforesaid stands of the parties, the defendants claim their right and title in the disputed sehan land on the basis of an agreement reached between the plaintiff and the defendants' father in the past. The plaintiff also claims his right and title in the disputed sehan land. It is to be clarified here that at the stage of disposal of an interim injunction application, question of right or title in the disputed land cannot be gone into by the court nor the same is relevant for purposes of disposal of the injunction application in as much as the rival claims as to right and title of the parties

in the disputed land can only be decided at the trial and not at the stage of disposal of the interim injuction application. An interim injunction application has to be decided on the basis of possession of the parties over the disputed land.

6. The plaintiff has clearly stated in his plaint, injunction application 6C2 and the accompanying application 7C2 that he is in the excelusive possession of the land in dispute for long and his family has been using it in various forms. From the position of the disputed sehan land as shown by the Amin Commissioner in his map and report 29C2, it transpires that the disputed sehan land lies in front of the main door of the house of the plaintiff and not on the frontage of the defendants' house. The position of the disputed sehan land as shown by the plaintiff in the map given at the bottom of the plaint thus finds support from the map prepared by the Amin Commissioner. The defendants themselves have admitted in their objection 18C2 and the accompanying affidavit 19C2 that the disputed sehan land is presently in the occupation of the plaintiff and for that reason, a clear prima facie case in favour of the plaintiff is found to be existing on the basis of his exclusive possession over the disputed sehan land.

7. In the event of any encroachment and construction of boundary wall on the disputed sehan land presently under occupation of the plaintiff, it is the plaintiff who would stand deprived of his use and occupation of the disputed sehan land and not the defendants. The balance of convenience with regard to the use and occupation over the disputed sehan land thus lies in favour of the plaintiff. In the event of an encroachment and construction of boundary wall thereon by the 43defendants, the plaintiff would have to suffer irreparable loss in as much as he would stand deprived of the user of the said sehan land.

8.In the light of the observations made in the preceding paragraphs, the plaintiff has succeeded in establishing in his favour a clear prima facie case, balance of convenience and irreparable injury,necessary for grant of interim injunction, against the defendants. The interim injunction application 6C2 is therefore allowed. The defendants are restrained during the pendency of the present civil suit from interfering into the peaceful possession of the plaintiff over the disputed sehan land

and from encroaching thereon by constructing the boundary wall.

(27)
Order declaring personal service of summons on defendant
(Order 5, rule 15 CPC)

Called out. Counsel for plaintiffs and defendants no. 1, 3, 4 and 5 are present. Summons paper no. 32 A-2 has been returned by the process server with the report of personal service on the defendant no. 2 Ram Kumar. Hence service on defendant no. 2 is declared sufficient. Fix 12.02.2021 for written statements of the defendants and framing of issues.

(28)
Order on refusal and affixation of summons by defendant
(Order 5, rules 17 & 19 CPC)

Called out. Only plaintiff with his counsel responds. None is present for the defendant. Summons paper no. 34 A-2 sent to the defendant Mohan Kumar through registered post has been returned by the postman with his endorsement that the defendant refused to receive the registered postal article. The said registered 46summons was sent to the defendant at his correct and complete address given in the plaint alongwith the acknowledgment due and sufficient postage. So service of summons on defendant Mohan Kumar is declared sufficient on the basis of his refusal to receive the registered postal article. Case is today fixed for written statement of the defendant and also for framing of issues but the defendant is neither present nor has filed his written statement. So the suit is directed to proceed under Order 8, rule 10 CPC. Palintiff may produce his evidence by 16.02.2021.

(29)

Framing of Issues

Court of Addl. Civil Judge (Junior Division), Mohana Dist Gajapati

Original Suit No. 128/2016

Ram Pratap & Others

_____Plaintiffs

Versus

Suresh Kumar & Others

_____Defendants

Issues

12.12.2020:

Case called out. Learned counsel for both he parties are present. Case is today fixed for framing of issues. Heard the learned counsel for the parties and perused the record. Following issues are framed on the basis of the pleadings of the parties:

1. Whether the plaintiffs are owners in possession of the property in dispute as pleaded in the plaint?

2. Whether the property in dispute is mis-identifiable as has been stated in Para 16 of the written statement of the defendants?

3. Whether the present court has jurisdiction for hearing of the present suit?

4. Whether the suit is time barred as has been stated in Para 22 of the written statement?

5. Whether the disputed property has been under-valued and the court fees paid is insufficient?

6. Whether the plaintiffs are entiled to the reliefs claimed in the suit?

No other issue has been pressed by either party nor arises. Plaintiffs have today produced five documents vide list paper No. 17C2. The learned counsel for the defendants has denied the genuineness of the said documents. So fix 07.01.2021 for hearing on issue No. 5. Defendants may file their documents, if any, in rebuttal of the aforesaid documents of the plaintiffs.

(30)
Disposal of Issue of Valuation and Court-fee

20.02.2021:
Called out. Counsel for both the parties are present. Case is today fixed for hearing on issue No. 5 which relates to valuation and court-fee. Heard the learned counsel for the parties and perused the record.

The plaintiff has filed the present suit for cancellation of sale deed dated 18.05.2020 allegedly executed by him in favour of the defendants. The subject matter of the suit is agricultural land bearing Minjumla khasra No. 22 Ka/3, situated in village: Rampur, Tehsil: Mohanganj, District: Lucknow. The plaintiff has valued the suit property at Rs. one lakh as its market value as on the date of institution of the suit. The counsel for defendants objects that the amount of consideration as mentioned in the sale deed is Rs. two lakh and the same being much higher than its market value, the plaintiff should have evaluated the suit property on the basis of its sale consideration mentioned in the sale deed and the court fee ought to have been paid accordingly.

In the case reported in Rajendra Prasad Yadav versus Ravindra Nath Singh, 2014 (102) ALR 620 (All) where in a suit for cancellation of sale deed involving bhumidhari land, the plaintiff had evaluated the land by determining its market value, it has been held by the Hon'ble Allahabad High Court that the market value of the property has to be ascertained by keeping into consideration the Explanation to Section 7(iv)-A of the Court Fees Act and the same cannot be discarded merely because it is different from the sale consideration set forth in the instrument. Value of the property for purposes of this sub-section shall be the market value which shall be deemed to be the value as computed in accordance with sub-section (v)(v-A) and (v-B) of Section 7, as the case may be, of the Court Fees Act, 1870. In view of the law as above, the plaintiff has rightly valued the land involved in the said sale deed on the basis of its market value as on the date of institution of the suit and sufficient court fee has been paid by him accordingly. There is therefore no force in the objections raised by the

defendants. The above issue is decided in favour of the plaintiff and against the defendants accordingly.

(31)
Disposal of Commissioner's Report

ORDER
16.02.2021:
Called out. Both the parties are present with their counsel. Case is today fixed for hearing and disposal of the report 18C2 submitted by the Amin Commissioner. Defendants have filed their objectios 19C2 against the said report 18C2 of the Amin Commissioner. Plaintiff has not filed any objections.

Heard the learned counsel for both the parties and perused the Amin Commissioner's report 18C2.

Plaintiff has no objection against the Amin Comissioner's report 18C2. Drawing ateention of the court towards the objections 19C2 filed by the defendants against the Amin Commissioner's report 18C2, the learned counsel for the defendants has argued that the Amin Commissioner has wrongly stated in his report 18C2 that the disputed land, constructions and trees standing thereon are in possession of the plaintiff. The leanred counsel further objects that the boundaries of the disputed property as shown by the Amin Commissioner in the map prepared by him are also not correct. Amin Commissioner was not instructed by the court to submit his report on the point of ownership and possession of the parties over the disputed land nor the same was within his powers and functions. The parties will therefore be free to lead their evidence on the issue of ownership and possession of the disputed property. As regards the objection raised by the defendants that the boundaries of the disputed land have not been shown correctly by the Amin Commissioner in the map prepared by him, it is clarified that the parties will be free to lead their evidence on the issue of boundaries of the disputed property as well. So the report of the Amin Commissioner 18C2 together with the map of the disputed property prepared by him are accepted subject to evidence of the parties. Ojbections 19C2 raised by the defendants are disposed of accordingly. Fix 28.02.2021 for framing of issues.

(32)

Order on impleadment application under Order 1, rule 10 (2) CPC

Court of Addl. Civil Judge (Junior Division), No.5, Gunupur , Dist Rayagada

O.S.No. 432 of 2020

Suresh Kumar

----------Plaintiff

Versus

Bodh Ram and others

----------Defendants

Disposal of impleadment application 34 A2 moved under Order 1, rule 10(2) CPC

ORDER

24.01.2021

Application 34A2 along with affidavit 35 C2 has been moved by the third party/strangerapplicant Mohan Kumar under Order 1, rule 10(2) CPC read with Order 6, rule 17 CPC withthe prayer to implead him in the present suit as defendant no. 4 and permit him to contest the suit of the plaintiff.

The applicant states in his aforesaid application that he had purchased part of the disputed land from the father of the plaintiff by means of a registered sale-deed executed in his favour by the plaintiff's father on 4.12.2018 and he had taken over the possession of the said land soon after the execution and registration of the said sale-deed in his favour. Plaintiff's father died in the month of September, 2020 and since then the plaintiff has been telling the local people that he does not recognize the said sale-deed executed by his father in favour of the applicant and is making attempts to re-occupy the said land with the help of the defendants no.1to 3 to this suit who have no right and interest whatsoever in the said land. The plaintiff has filed the present suit in collusion with the defendants to obtain a collusive decree to the detriment of the applicant. The applicant has filed a certified copy of the said sale-deed.

Plaintiff has opposed the application 34A2 by filing his objection 39C2 and the counter affidavit 40C2. The stand of the plaintiff is that the applicant had got the said sale-deed executed in his favour by his father by playing fraud on him and without paying him any consideration. The plaintiff says that the aforesaid sale-deed is void for want of payment of consideration and is not binding on him and after the death of his father he has acquired all the rights and title in the disputed land as the sole heir to his deceased father. Applicant has no right, title and interest in the disputed land and he is not entitled to be added as defendant in the present suit.

Defendants have also opposed the applicant's impleadment on the ground that the sale-deed produced by the applicant does not create any right or title in his favour in the disputed land in as much as the transferor and father of the plaintiff was not the owner of the disputed property and the defendants being in possession of the disputed property for more than thirty 59years have perfected their possessory title through adverse possession over the land in dispute.

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

The plaintiff has filed the present suit against the defendants for the relief of permanent injunction. The plaintiff states that he had inherited the disputed land from his father while the defendants claim their title into it through adverse possession. The applicant claims to have purchased part of the disputed land from the father of the plaintiff by means of registered sale-deed and claims to be in possession of the part of the said property. He has filed a certified copy of the aforesaid sale-deed which goes to show that the applicant has an minterest in the property in dispute. In a suit for injunction, normally it is the plaintiff who is treated to be the dominus litis i.e. master of the suit and he cannot be compelled to add a person as party against whom he does not claim to have any cause of action or against whom he does not seek any relief. The applicant on the basis of the strength of his aforesaid sale- deed states that the plaintiff has filed the present suit in collusion with the defendants and in case the applicant is not impleaded as party to the suit , there would be every possibility of a collusive decree being passed by the court in the absence of the applicant and his rights and interest in the disputed property would stand adversely

affected. The Ld. counsel for the applicant argues that presence of the applicant as party to the suit would help the court to completely and effectively decide all the questions involved in the case.

From the sale-deed executed by the father of the plaintiff in favour of the applicant , it is evident that the applicant has got an interest in the disputed property and in case he not impleaded as party to this suit and not allowed to contest the claims of the parties to the suit, his interest would be adversely affected. Further, to avoid the multiplicity of suits and possibility of a collusive decree being passed, impleading the applicant as a proper party to the suit appears to be proper. In the case reported in Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Center & Hotel Pvt. Ltd., AIR 2010 SC 3109, the Hon'ble Supreme Court has ruled that a proper party is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in whose favour or against the decree is to be made.The applicant is though not a necessary party to this suit but his impleadment to the suit as proper party will help the court to completely and effectively decide all the disputes involved in the case and as such the applicant is found to be a proper party to this suit. So the application 34A2 is allowed at a cost of Rs. 500/- payable by the applicant to the plaintiff. The plaintiff is directed to implead the applicant Mohan Kumar as defendant no.4 to this suit and amend the plaint accordingly within a week. The newly added defendant no.4 may file his written statement thereafter by 25.02.2021.

(33)
Disposal of Amendment Application under Order 6, rule 17 CPC

ORDER
24.01.2021
Plaintiffs have moved application 46A2 under Order 6, rule 17 CPC seeking permission to amend the plaint. The plaintiffs have instituted the present suit for the relief of perpetual prohibitory injunction against the defendants on the ground that the plaintiffs are the owners in possession of the abadi land described in the plaint and they had inherited the same from their ancestors.

Plaintiffs and defendants are the descendants of one common ancestor a few generations back and their grandfathers initially lived in joint family and separated their households in 1954 and built their separate houses adjacent to each other according to their convenience but there was no partition of the abadi land by metes and bounds between them. Later in the year 1965, the grandfathers of both the parties agreed under an oral family settlement that the portions of the abadi land under their respective occupation would remain with them and their descendants forever and their descendants would not dispute the said family settlement. The plaintiffs in their application 46A2 state that due to failing of memory and oversight , the facts relating to the said family settlement could not be incorporated in the plaint at the time of institution of the suit. By means of the proposed amendments, the plaintiffs now want to incorporate in the plaint the aforesaid facts relating to the family settlement arrived at between the grandfathers of both the parties in the year 1965.

Defendants have opposed the plaintiffs' application 46A2 by filing their objections vide 48C2. The stand of the defendants is that no family settlement had taken place between the grandfathers of the parties in the year 1965 or thereafter and the aforesaid facts as to the oral family settlement as stated by the plaintiffs in their amendment application 46A1 are false, concocted and afterthought. The defendants further object that the the disputed abadi land has illegally been occupied by the plaintiffs and they are trying to set up a false claim of title in the disputed land on the basis of the alleged family settlement.

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

The plaintiffs have instituted the present suit for the relief of permanent prohibitory injunction against the defendants against their alleged interference in their possession over the diputed abadi land described in the plaint. As already stated in the plaint , the plaintiffs claim to have derived their title in the disputed land from their grandfather. The alleged oral family settlement in respect of the disputed property is said to have taken place between the grandfathers of both the parties in the year 1965. Whether or not the said claim of the plaintiffs as to the family settlement is true or false can be decided only at the trial after both the parties adduce theie evidence in

respect of their respective claims and not at the present stage of disposal of the amendment application.

The facts sought to be incorporated in the plaint by the plaintiffs regarding the said family settlement by way of the proposed amendments seem to be necessary to be introduced in the plaint for purposes of deciding the real controversy as to the respective claims of title by the parties in the diputed land. The proposed amendments neither change the nature of the suit nor introduce any new cause of action in the plaint, though the same are being introduced at a belated stage. The amendment application 46A1 is therefore allowed at a cost of Rs 250/- (Rs. two hundred fifty only) payable by the plaintiffs to the defendants. The plaintiffs are 61directed to carry out the said amendments in the plaint within a week. The defendants may file their additional written statement by 28.01.2021. So fix 03.02.2021 for framing of additional issues, if any.

(34)

Order on application moved u/s 5, Limitation Act, 1963

Misc. Case No. 54 of 2019
Original Suit No.875 of 2015
Ram Pratap and Others
_____Plaintiffs/ Applicants
Versus
Gaya Prasad and Others
_____ Defendants/
Opposite Parties

ORDER
28.3 2020

Plaintiff has moved application 3C2 on 26.3.2020 supported by affidavit 4C2 u/s 5 of the Limitation Act, 1963 seeking condonation of delay in moving application under Order 9, rule 4 CPC for restoration of the Original Suit No. 875/ 2015 at its original number.

Heard the learned counsel for the plaintiff and perused the record of the above original suit.

As is revealed from record, the aforesaid original suit was dismissed in default of both the parties on

12.11.2019 when the same was fixed for framing of issues. The plaintiff has statedmin his application 3C2 that he could not attend the court on 12.11 2019 as one of his family,members had taken seriously ill on that day and he had to take him to doctor where he was,hospitalized for treatment and he had to look after him at the hospital for the period of his,about four months hospitalization there and as such could not contact and instruct his counsel to appear before the court on the date fixed. He has further stated that soon after the recovery of his diseased family member, he contacted his counsel and came to know that the suit was dismissed on 12.11.2019 in default of both the parties and instructed him to move the present application seeking condonation of delay and restoration of the suit. Papers of medical treatment of his family member have also been annexed by the plaintiff with his affidavit 4C2 filed in support of the application 3C2. Plaintiff claims that the application 3C2 has been moved by him within the limitation period of thirty days from the date of knowledge of dismissal of the suit from his counsel.

In view of the above facts as supported by affidavit of the plaintiff and the papers of medical treatment and hospitalization of his family member, the court is of the view that the delay in moving the restoration application by the plaintiff has been satisfactorily explained by the plaintiff. Application 3C2 is therefore allowed and the delay in moving the application for restoration of the said suit dismissed in absence of both the parties is condoned.

Note: According to Sections 2(j) and 3 read with Item 122, Part I to the Third Division of the Schedule of the Limitation Act 1963, period of limitation for moving an application for restoration of suit dismissed in default of appearance of the plaintiff is thirty days from the date of dismissal of the suit.

(35)

Order setting aside ex-parte decree under Order 9, rule 13 CPC

Misc. Case No. 36 of 2020
Original Civil Suit No. 406 of 2019
Ram Gopal and Others
_____Defendants/ Applicants

Versus

Mohd. Sakoor and Others
_____ Plaintiffs/ Opposite Parties

ORDER
04.04. 2020:
The defendants / applicants Ram Gopal and Others have moved application 28C2 alongwith affidavit 29C2 with the prayer to set aside the ex- parte judgment and decree dated 22.12.2019 passed by this court in Civil Suit No. 36/2020, Mohd. Sakoor and Others versus Ram Gupal and Others and permit the defendants to contest the above civil suit on merits.

The plaintiffs Mohd. Sakoor and Others had filed the above civil suit seeking decree of permanent prohibitory injunction against the defendants Ram Gopal and Others to restrain them from interfering in their possession over their abadi land described in the plaint filed in the civil suit mentioned above. The defendants did not appear despite service of summonses on them. The suit was directed by the then Presiding Officer of this court to proceed ex- parte against the defendants by order dated 20.11.2019. After production of ex parte evidence by the plaintiffs, the suit was decreed ex -parte by the then Presiding Officer by his judgement and order dated 22.12.2019. The defendants / applicants state that the summonses were not served on them and they had no knowledge of the institution and proceedings of the suit. Plaintiffs / opposite parties have opposed the aforesaid application 28C2 of the defendants/ applicants by filing their objections and counter affidavit 32C2 and 33C2 respectively. The stand of the plaintiffs / opposite parties is that the defendants had refused to receive the summonses from the process server and thereafter the service of the summonses was effected on them by means of publication in the daily news paper as was directed by the court but despite publication of the summonses in news paper, the defendants/ applicants did not appear and did not file their written statement.

The plaintiffs / opposite parties state that the aforesaid ex- parte judgment and decree dated 22.12.2019 is not liable to be disturbed and the application 28C2 moved by the defendants / applicants deserves to be rejected.

Heard the learned counsel for both the parties and perused the record of the above civil suit and also of the present Misc. Case. I

t is revealed from perusal of the record of the aforesaid civil suit that the summonses issued by the court to the defendants/applicants were returned by the process server with his report that the defendants/ applicants had refused to receive the summonses but no order on the said report of the process server was passed under Order 5, rules 17 and 19 CPC read with Rule 139 of the G.R. (Civil). Summonses to the defendants / applicants were not sent through registered post and without exhausting the mode of service through registered post, service of summonses through publication was outright ordered and as such the provisions of Order 5, rule 20 CPC read with Rule 141 of the G.R. (Civil) were not complied with before ordering the suit to proceed ex-parte against the defendants/applicants. It is thus evident that the usual modes of service of summonses were not exhausted. There is therefore considerable force in the contention of the defendants /applicants that they were not served and had no knowledge of the said suit and its proceedings. The application 28C2 seeking setting aside of the aforesaid ex parte judgment and decree dated 22.12.2019 has been moved by the defendants / applicants within a period of 30 days from the date of knowledge of the said ex-parte judgment and decree as has been provided by Article 123 of the Limitation Act, 1963.

In view of the observations as made hereinabove, the ex-parte judgment and decree dated 22.12.2019 is found to be not sustainable and the same deserves to be set aside.

The ex- parte judgment and decree dated 22.12.2019 passed in the said civil suit are hereby set aside at a cost of Rs. 500/- to be paid by the defendants /applicants to the plaintiffs / opposite parties. Fix 25.05.2020 in the above civil suit for written statement of the defendants / applicants and also for framing of issues

(36)

(Restoration of suit dismissed in default of both parties)

Misc. Case No. 54 of 2019

Original Suit No.875 of 2015

Ram Pratap and Others_____Plaintiffs/ Applicants

Versus

Gaya Prasad and Others _____ Defendants/ Opposite Parties

ORDER

04.04. 2020

Plaintiff has moved application 5C2 on 26.3.2020 supported by affidavit 6C2 under Order 9,rule 4 CPC for restoration of the Original Suit No. 875/ 2015 at its original number.

Heard the learned counsel for the plaintiff and perused the record of the above original suit.As is revealed from record, the aforesaid original suit was dismissed in default of both the parties on 12.11.2019 when the same was fixed for framing of issues. The plaintiff has stated in his application 5C2 that he could not attend the court on 12.11 2019 as one of his family members had taken seriously ill on that day and he had to take him to doctor where he was hospitalized for treatment and he had to look after him at the hospital for the period of his about four months hospitalization there and as such could not contact and instruct his counsel to appear before the court on the date fixed. He has further stated that soon after the recovery of his diseased family member, he contacted his counsel and came to know that the suit was dismissed on 12.11.2019 in default of both the parties and instructed him to move applications seeking condonation of delay and restoration of the suit. Papers of medical treatment of his family member have also been annexed by the plaintiff with his affidavit 6C2 filed in support of the application 5C2. The delay in moving the restoration application has already been condoned by order dated 28.3.2020 passed in the present Misc. case.

In view of the above facts as supported by affidavit of the plaintiff and the papers of medical treatment and hospitalization of his family member, the court is satisfied that the plaintiff could not have appeared before the court on 12.11.2019 for the reasons stated above and the suit was dismissed in absence of both the parties. The application 5C2 therefore deserves to be allowed. The

order dated 12.11.2019 is hereby set aside and the suit is restored at its original suit no. Issue notices to the defendants through process server fixing 05.05.2020 in the original suit for framing of issues. Plaintiff shall take steps within three days from today.