

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal Against Order No. 43 of 2026

Smt. Harshi Bhtra and another Applicants

Vs.

Smt. Namrata Kalra and others Respondents

Present: Mr. T.S. Bindra (through video conferencing) and Mr. Rachit Mangalik, Advocates for the appellant.

Ms. Samridhi Arora (through video conferencing) and Mr. Mehul Joshi, Advocates holding brief of Ms. Medhavi Divya Saxena, Advocate for the respondents.

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this appeal is made to Order dated 22.12.2025, passed in Original Suit No.117 of 2025, Smt. Namrata Kalra and others Vs. Ishwar Chand and others, by the court of Civil Judge (Sr. Div.), Dehradun ("the Suit"), by which, while deciding an Application-6 C-2, under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 ("the Code") parties were directed to maintain *status quo qua* the property in the suit.

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

3. Learned counsel for the appellants submits that the order is not in accordance with law. In paras 25 and 26 of the impugned order, the court has merely recorded that it would be justified if the parties are directed to maintain *status quo* without examining the three factors necessary to be examined while dealing with an application under Order 39 Rule 1 and 2 of the Code, which are: (i) prima facie case; (ii) balance of convenience; and (iii) irreparable injury. He further submits that admittedly, the appellants are in possession. The appellants had purchased the

property by a duly registered sale-deed and, thereafter, got a map sanctioned on that property, erected a multi story building and now, suddenly a *status quo* order has been passed, which deserves to be set aside.

4. Learned counsel for the appellants also submits that, in fact, the plaintiffs or the contesting parties are respondent nos.1 to 4 in this appeal and the other respondents are proforma defendants, non-contesting. This fact is not denied by learned counsel for the respondent nos.1 to 4, who are plaintiffs in the suit.

5. Learned counsel for the respondent nos.1 to 4 submits that the description of the property has been given in a table in para 2 of the plaint. She submits that, in para 17 and 18 of the impugned judgment, the court has recorded the fact based on which the order has been passed. But, she fairly concedes that, in fact, findings on *prima facie* case, balance of convenience and irreparable injury has not been recorded by the court below.

6. Order 39 Rule 1 of the Code makes provisions, as to in which cases the temporary injunction can be granted. The law on this point is well settled. Before any finding is recorded on an application for temporary injunction, three factors namely (i) *prima facie* case; (ii) balance of convenience; and (iii) irreparable injuries have to be examined. After objections having been filed without discussing the merits, passing of mere *status quo* order may not be termed as order in accordance with law. The impugned order runs in 27 paragraphs. From paragraphs 1 to 24, the court has discussed the arguments, documents that have been filed by the

parties in support of their averments *qua* temporary injunction. In para 25, in the impugned order, the court records that whatever grounds have been taken by the parties in their respective applications and objections they pertains to evidence which may be decided after evidence is adduced. Thereafter, in para 26, the court records that it would be justified, if the parties are directed to maintain *status quo*.

7. The parties are contesting their claims. It is the claim of the appellants that they had purchased the property and had got a map sanctioned for construction of multi story building, which is underway. The respondent nos.1 to 4 have a different claim. According to them, on a portion of land belonging to them the construction is being raised. The defendant nos. 1 and 4 have sought temporary injunction under Order 39 Rule 1 and 2 of the Code. Objections have been filed. At this stage, the court is required to deal with three factors namely, (i) *prima facie* case; (ii) balance of convenience; and (iii) irreparable injuries. It has not been done. Without any discussion, *status quo* order has been passed. The Court further records that the arguments that have been raised pertains to evidence.

8. Whatever finding is recorded at the stage of deciding an application under Order 39 Rule 1 and 2 of the Code that finding does not decide the suit. That finding is recorded based on affidavits and documents produced by the parties at that stage only to the extent of deciding an application under Order 39 Rule 1 and 2 of the Code. The suit is decided once parties are permitted to adduce their evidences. Therefore, this Court is of the view that the

impugned order is not in accordance with law. The court below ought to have discussed the rival claims on temporary injunction while examining three factors namely, (i) *prima facie* case; (ii) balance of convenience; and (iii) irreparable injuries. It has not been done. Therefore, while setting aside the impugned order, the court below may be requested to decide the application under Order 39 Rule 1 and 2 of the Code filed by the respondent nos.1 to 4 in accordance with law, after affording an opportunity of hearing to the parties.

9. The impugned order is set aside. The matter is remitted to the court below to decide the application under Order 39 Rule 1 and 2 of the Code filed by the respondent nos.1 to 4, in accordance with the law, after affording an opportunity of hearing to the parties. This application shall be decided expeditiously, while avoiding adjournments.

10. The appeal is decided accordingly.

(Ravindra Maithani, J.)
19.02.2026

Sanjay