

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No. 109 of 2015
(PLA filed on 30.1.2015)

1. Khalid Sharif son of Muhammad Sharif, r/o House No. 17 Sector B-2, Mirpur.
2. Ameer Hamza s/o Muhammad Bashir Tabassum, r/o House No.12, Sector B-2, Mirpur.
3. Muhammad Shakeel s/o Ch. Ali Muhammad, r/o House No. 12-A, Sector B-2, Mirpur.
4. Nasir Saeed Ansari s/o Abdul Khaliq Ansari, r/o House No. 13, Sector B-2, Mirpur.

.... APPELLANTS

VERSUS

1. Khawaja Imtiaz s/o Khawaja Muhammad Hussain, r/o House No. 18, Sector B-2, Mirpur.
 2. Farhan s/o (unknown), Incharge, The Educators School System, North Zone Mirpur, through Kh. Imtiaz (Respondent No.1).
 3. Municipal Corporation Mirpur, through its Administrator.
- RESPONDENT
4. Muhammad Bashir Tabassum s/o Haji Abdul Khaliq.

5. Muhammad Aqeel s/o Ch. Ali Muhammad
r/o Sector B-2, Mirpur.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court
dated 2.12.2014 in Revision Petition No.49 of 2014).

FOR THE APPELLANTS: Mian Sultan Mehmood,
Advocate:

FOR THE RESPONDENT: Raja Muhammad
Shafique, Advocate.

Date of hearing: 29.11.2016.

JUDGMENT:

Mohammad Azam Khan, C.J— The titled appeal by leave of the Court arises out of the judgment of the High Court dated 2nd December, 2014, whereby the revision petition filed by the appellants, herein, has been dismissed.

2. The necessary facts for disposal of present appeal are that the plaintiffs-appellants, herein, filed a suit for perpetual injunctions in the Court of Senior Civil Judge, Mirpur that the

respondents shall refrain from using the building, built on Plot No. 18, situate in Sector B-2, Mirpur, for commercial purposes, like School/College, Hostel etc. A prayer for direction was also sought that the respondents shall remove the board installed on the building by the name of the Educators School. Along with the suit, they filed an application for issuance of the stay order. The trial Court initially, issued the status quo order but after seeking objections, vacated the same. An appeal filed in the Court of District Judge was dismissed. Thereafter, the appellants filed a revision petition in the High Court, which was dismissed through the impugned judgment dated 2nd December, 2010, hence, this appeal by leave of the Court.

3. Mian Sultan Mehmood, Advocate, the counsel for the appellants argued that the judgment of the High Court is against law and the record. The suit for perpetual injunction was filed in the Court of Senior Civil Judge, Mirpur

on 17th August, 2014. In the plaint as well as in the application for stay order, it was specifically alleged by the plaintiffs that the defendants want to establish a school in the building. They attained knowledge when the defendants installed the board of school by the name of "The Educators". House No. 18, where the board has been installed, is a residential house, it is being used as a residential house from the time it was constructed. The houses of the plaintiffs are adjacent to the said house. They will be badly disturbed. There was no school when the suit was filed and the status quo order was issued. The learned counsel submitted that previously, the school was functioning in another building, it has been transferred in the present building after the filing of the suit. The learned counsel submitted that the trial Court, the first appellate Court and the High Court have incorrectly held that the school is running, therefore, irreparable loss will be caused to the defendants. The fact of the matter is that the

school was not running in the building when the stay order was issued. It has been established later on. The learned counsel argued that the defendants have not alleged that the school is running before filing of the suit. The learned counsel argued that the judgment of the High Court is against the provisions of Order 39 rule 1 & 2, C.P.C.

4. While controverting the arguments, Raja Muhammad Shafique, Advocate, the learned counsel for the respondents argued that the judgment of the High Court is perfectly legal. No illegality is found in the impugned judgment. The school was established and running in the said building since 22nd July, 2013. The suit was filed on 17th August, 2013. The trial Court initially ordered for maintaining status quo but after perusal of record vacated the same. The learned counsel argued that it was specifically alleged by the defendants-respondents, herein, that round about 180 students are admitted in the school. The educational session of the

students will be ruined and the defendants will suffer irreparable loss. The learned counsel argued that previously in the same locality Ehsan Academy; Municipal Corporation School; Chinnar Public School; Bacon House; Tuition Centre and Girls Science College etc. are running. The plaintiffs have not raised any objection on the establishment of the said schools. The suit has been filed with mala-fide intention. No prima-facie arguable case is made out by the plaintiffs-appellants, herein. The suit merited dismissal. He requested for dismissal of the appeal. He relied upon the case reported as *Abdul Aziz vs. Abdul Hameed and 10 others* (2004 SCR 203).

In the case reported as *Abdul Aziz vs. Abdul Hameed and 10 others* (2004 SCR 203), this Court observed that permanent injunction can only be granted in those cases in which the possession of property or the suit land vests with the plaintiff.

5. We have heard the learned counsel for the parties and also perused the record. The plaintiffs alleged in the plaint that they are residents of Sector B-2, Mirpur. The defendants want to establish a school in House No. 18, Sector B-2, Mirpur, which is a residential locality. The houses of the plaintiffs are adjacent to the said school. The plaintiffs have installed the board by the name of "The Educators" on the house built on Plot No. 18, Sector B-2, Mirpur. Their privacy will be adversely affected. The said plot has been allotted for residential purpose. The suit was filed on 17th August, 2013. Along with the plaint, an application for status quo was also filed. The trial Court initially issued status quo order but after seeking objections and hearing the parties, vacated the same on 31st August, 2013. The trial Court, the first appellate Court and the High Court dismissed the application, appeal and the revision petition on the ground that the school is already running in the building. The defendants-respondents,

herein, in their application for vacation of stay order claimed that round about 180 students have been admitted in the school. A number of other schools are working in the locality, the plaintiffs have not objected on any other school. The suit has been filed with mala-fide intention.

6. For decision of an interim injunction application the Court has to consider three necessary ingredients; (i) a good prima-facie arguable case, (ii) irreparable loss and; (iii) balance of convenience. This Court in the case reported as *Zafar Farooq vs. Raja Dil Nawaz Khan* (2000 SCR 163) has observed that at the stage of granting or refusing the interim injunction, the Court has to see as to whether a prima-facie case has been made out or not and it is not expected to closely examine the merit of the case. It has further been observed that the plaintiff must satisfy the Court that there is a fair and substantial question to be tried and there is a probability of his obtaining a decree if the evidence remains as it is. The relevant

portion of the referred judgment is reproduced as under:-

“---At the stage of granting or refusing the interim injunction, the Court has to see as to whether a prima-facie case has been made out or not and it is not expected to closely examine the merits of the case. The plaintiff must satisfy the Court that there is a fair and substantial question to be tried and there is a probability of his obtaining a decree if the evidence remains as it is. It follows prima-facie that the existence of a right and its infringement are the first conditions for the grant of a temporary injunction. All that the Court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and the comparative balance of convenience and inconvenience has also to be looked into.”

The Courts below have observed that round about 180 students are admitted in the school. The school is functioning in the building, as such prima-facie irreparable loss will be caused to the defendants if the school is ordered to be closed at this stage. The suit was filed in the month of August, 2013, a period of more than three years has passed. Therefore, instead of ordering for closure of school, it will be proper

for us to direct the trial Court to decide the matter expeditiously.

7. The appeal is disposed of with a direction to the trial Court, Senior Civil Judge, Mirpur, that it shall decide the original suit within a period of three months from the receipt of the copy of this order with an intimation to the Additional Registrar of this Court, Registry Office, Mirpur. There will be no order as costs.

CHIEF JUSTICE
Mirpur.
12.2016.

JUDGE