

KRISHNA v. KANTA AND OTHERS  
(K. Kannan, J.)

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participation of the bar in the adjudicatory process itself by meaningful assistance to the bench in a participative, collaborative way. This is more relevant in cases that deal with compensation claims, be they land acquisition cases by compulsory deprivation of property or injury/death cases by accidental deprivation of limbs or injuries to the body.

(10) The awards stand modified and the appeals are allowed to the above extent, as set out in para 6 above.

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**A. Jain**

**Before K. Kannan, J.**

**SMT. KRISHNA WIFE OF SHRI RAM KUMAR—Petitioner**

*versus*

**SMT. KANTA WIDOW OF ANAND SARUP  
AND OTHERS—Respondents**

**CR No. 3029 of 2012**

September 4, 2013

***Code of Civil Procedure, 1908 - O. 39, Rls. 1 and 2 - Temporary injunction - Status quo - Ex-parte interim injunction was granted by passing status quo order - Held, that it is inappropriate for a judge to pass an order of status quo without stating what the status quo is - Status quo is a manner of preserving the property, if prima facie case seeking for injunction is established - However, in ordering police protection, Court recorded that plaintiff-sub-lessee was in possession of suit land under the lessee and, hence, possession was required to be protected - Although reasoning was unsatisfactory but on over all consideration of all facts Court had come to the correct conclusion - Ultimate decision of Court was to be maintained.***

*Held*, that it is grossly inappropriate for a Judge to pass an order of *status quo* without stating what the *status quo* is. In a preventive relief of injunction, as opposed to the mandatory relief, the courts are guided by 4 factors: (I) the party's *prima facie* case, who seeks for injunction; (ii) balance of convenience in his favour; (ii) irreparable loss and hardship, if injunction is not be granted; and (iv) preservation of *status*

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*quo*. *Status quo* is a manner of preserving the property, if the petitioner's *prima facie* case seeking for injunction is established. It is intended to ensure that the situation, as stated and found by the court, was preserved. It is never to be understood that such an order could be passed when the Court is in a predicament to decide whether the plaintiff is in possession or the defendant is in possession. It shall never be an order of indecision, but shall be an order on a conscious application of mind by the Court as to what the status of the property is, and how it shall be preserved. An one line order that directed to maintain *status quo* is against the tenor of mandate under Order 39 Rules 1 and 2 CPC.

(Para 3)

*Further held*, that the provision, which requires an order that the Court can pass under Order 39 Rules 1 and 2 CPC, is required to state reasons under Order 39 Rule 3 CPC. If the Court is merely ordering notice, no reason need to be given, but if the Court grants an *ex parte* injunction, even if it was an order of *status quo* by virtue of the proviso to Rule 3, the Court shall record the reasons for its opinion that the object of grant of injunction would be defeated, if injunction is not granted. It is almost seen as a quick exit for a Presiding Officer from the facts of the case to pass such an order, wherever he does not find adequate materials to hold one way or the other about the aspect of possession. *Status quo* orders are bound to create a confusion to parties, unless the Court brings out in the same order as to its finding regarding the possession in the hands of one or the other party. If ever it happened that the Court is unable to find a sure case of possession in the hands of the person, who seeks for injunction, it should be only taken that in such an eventuality, the *prima facie* case is not established and shall not be favoured with interim relief. There is no way that the Court can in such a situation pass an order of *status quo*. If there is a scramble for possession and the Court is of the opinion that law and order is preserved, it is also competent to appoint a receiver, although the petition is only for injunction. This is only to explain the nature of order that is possible but no necessarily the order that alone could have been passed in this case.

(Para 4)

Arun Bansal, Advocate, *for the petitioner*.

Mrigank Sharma, Advocate, *for the respondents*.

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**K. KANNAN, J. (Oral)**

(1) The revision is against the order granting police protection. The Court has followed certain procedures which are not appropriate. I deem it necessary to set out the mistakes so that such recurrence does not happen.

(2) In a suit for injunction, the plaintiff has asked for interim relief of injunction as well. The plaintiff's contention was that he was a lessee under one Magha Ram. Magha Ram himself appears to have taken the property on lease from Hari Om and Ompati. The defendant in suit is one Krishna, who claimed the property as a purchaser from Hari Om and Ompati. A suit had been filed previously by the defendant contending that the lease in favour of Magha Ram was not true and valid and claimed that the property had been in her possession. The case concluded, with the Supreme Court holding that her plea was not acceptable and the suit had been dismissed. Magha Ram's lessee Anand Sarup has filed the present suit for injunction contending that the defendant had earlier filed a suit against him claiming possession, and would rely on the dismissal of the said suit as vindicating his claim to possession. When the suit was filed, it appears, the appeal was still pending. The trial Court, while issuing the interim order, directed the parties to maintain *status quo* with regard to possession and crops with the suit land, had passed an order dated 31.03.2010. The plaintiff had sought for police protection referring to the order issued on 31.03.2010 on a plea that despite the order of *status quo* issued, the defendant was causing disturbance to his possession. The Court has passed the impugned order allowing for police protection and setting out the justification for the order. It is this order issued on 25.04.2012 which is in challenge before me.

(3) I must observe that it is grossly inappropriate for a Judge to pass an order of *status quo* without stating what the *status quo* is. In a preventive relief of injunction, as opposed to the mandatory relief, the courts are guided by 4 factors: (i) the party's *prima facie* case, who seeks for injunction; (ii) balance of convenience in his favour; (iii) irreparable loss and hardship, if injunction is not be granted; and (iv) preservation of *status quo*. *Status quo* is a manner of preserving the property, if the petitioner's *prima facie* case seeking for injunction is established. It is intended to ensure that the situation, as stated and found by the court, was

preserved. It is never to be understood that such an order could be passed when the Court is in a predicament to decide whether the plaintiff is in possession or the defendant is in possession. It shall never be an order of indecision, but shall be an order on a conscious application of mind by the Court as to what the status of the property is, and how it shall be preserved. An one line order passed on 31.03.2010 that directed to maintain *status quo* is against the tenor of mandate under Order 39 Rules 1 and 2 CPC and against the decision of the Supreme Court in ***Kishore Kumar Khaitan and another v. Praveen Kumar Singh(1)***, where the Supreme Court commented about the impropriety of a Court to pass an order in the initial stage of litigation without indicating what the *status quo* is. While advertng to the nature of order passed by appellate Court, the Supreme Court said,

*“It is necessary to notice at this stage that in an original suit of this nature, it was not appropriate for the Additional District Judge to pass an order directing the parties to maintain status quo, without indicating what the status quo was. If he was satisfied that the appellant before him had made out a prima facie case for an ad interim ex parte injunction and the balance of convenience justified the grant of such an injunction, it was for him to have passed such an order of injunction. But simply directing the parties to maintain status quo without indicating what the status quo was, is not an order that should be passed at the initial stage of a litigation, especially when one court had found no reason to grant an ex parte order of injunction and the appellate Court was dealing with only the limited question whether an ad interim order of injunction should or should not have been granted by the trial Court, since the appeal was only against the refusal of an ad interim ex parte order of injunction and the main application for injunction pending suit, was still pending before the trial Court itself. Therefore, we are prima facie of the view that the Additional District Judge ought not to have passed an equivocal order like the one passed in the circumstances of the case.”*

(4) The provision, which requires an order that the Court can pass under Order 39 Rules 1 and 2 CPC, is required to state reasons under

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(1) (2006) 3 SCC 312

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Order 39 Rule 3 CPC. If the Court is merely ordering notice, no reason need to be given, but if the Court grants an *ex parte* injunction, even if it was an order of *status quo* by virtue of the proviso to Rule 3, the Court shall record the reasons for its opinion that the object of grant of injunction would be defeated, if injunction is not granted. I would understand the order when the Court passed an order granting *status quo* was passing an order without applying its mind and eliciting what the *status quo* was. It is almost seen as a quick exit for a Presiding Officer from the facts of the case to pass such an order, wherever he does not find adequate materials to hold one way or the other about the aspect of possession. *Status quo* orders are bound to create a confusion to parties, unless the Court brings out in the same order as to its finding regarding the possession in the hands of one or the other party. If ever it happened that the Court is unable to find a sure case of possession in the hands of the person, who seeks for injunction, it should be only taken that in such an eventuality, the *prima facie* case is not established and shall not be favoured with interim relief. There is no way that the Court can in such a situation pass an order of *status quo*. If there is a scramble for possession and the court is of the opinion that law and order is preserved, it is also competent to appoint a receiver, although the petition is only for injunction. This is only to explain the nature of order that is possible but not necessarily the order that alone could have been passed in this case.

(5) It is this *status quo* order which was used at a subsequent stage by the plaintiff to seek for police protection. Under normal circumstances, I would have quashed the order and remitted the matter for fresh consideration, but in the application ordering police protection, the Court has tried to justify its order and find a case of possession in the hands of the plaintiff, the task which it should have undertaken at the time when it originally passed the order on 31.03.2010. Even in the narration of facts, the Court had committed a mistake in assuming that certain suits have been filed by the defendant against the plaintiff. The reference ought to have been to a suit by the defendant in respect of the lease in favour of Magha Ram and not against the present plaintiff. The present plaintiff claims as a sub lessee under Magha Ram. The plaintiff's own case and his claim for injunction is vindicated only by the fact that the defendant had lost the earlier round of litigation up to the Supreme Court failing to establish her possession and failing in her attempt to

assail the lease in favour of Magha Ram. Her own subsequent suit for injunction against the present plaintiff-appellant challenging the lease in his favour also appears to have been dismissed and even the appeal was also dismissed. The dismissal of the defendant's suit at various times are themselves factors that prove that the lessee Magha Ram and sub-lessee—the present plaintiff are persons, who are in possession and, therefore, that possession was required to be protected. Although reasoning, as found in the court order, is unsatisfactory, I have noticed on overall consideration of all facts that the Court has come to a correct conclusion, although through poor reasoning. I still maintain the ultimate decision and find no reason to interfere with the same. The revision petition is dismissed.

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**S. Gupta**

***Before S.S. Saron & Navita Singh, JJ.***

**SURENDER—*Petitioner***

*versus*

**VIJAY SINGH AND ANOTHER—*Respondents***

**FAO No. 5265 of 2013**

March 10, 2014

***Family Courts Act, 1984 - S. 7(1) Explanation (g) - Code of Civil Procedure, 1908 - O. 21 - Execution proceedings - Custody of children - Appellant-father filed petition for custody of his minor children - Family Court decided in his favour - Respondents did not hand over custody - Appellant filed execution petition - Executing Court refused to hand over custody of children to appellant - Visitation rights given - Held, that Executing Court had no power to go behind the decree and decide whether or not custody of children was to be given to appellant or not - Executing Court acted beyond jurisdiction and in an illegal manner - Impugned order set-aside - Case remanded with the direction that the Executing Court shall proceed in accordance with law.***

***Held***, that the executing court had no power to go behind the decree and to decide whether or not custody of the children was to be