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**SooperKanoon Citation : [sooperkanoon.com/483754](http://sooperkanoon.com/483754)**

**Court : Allahabad**

**Decided On : Dec-13-2001**

**Reported in : 2002(1)AWC254**

**Judge : B.K. Rathi, J.**

**Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2**

**Appeal No. : F.A.F.O. No. 1270 of 2000**

**Appellant : Raja Ram Soni**

**Respondent : Kanpur Development Authority and ors.**

**Advocate for Def. : Lal Ji Sinha, Adv.**

**Advocate for Pet/Ap. : Sidhharth Varma, Adv.**

**Disposition : Appeal dismissed**

**Judgement :**

**B.K. Rathi, J.**

1. The appellant filed a Suit No. 114 of 1999 for injunction against the respondents for restraining them from constructing a commercial complex over plot, bearing No. 207 of Jagannath Mohal at Kohna area, Kanpur city. The appellant also moved an application under Order XXXIX. Rules 1 and 2. C.P.C. for temporary

Injunction to restrain the respondents from constructing their commercial complex over the disputed plot. The application was opposed by the respondents. The same has been rejected by the order, dated 17.5.2000 by the Additional Chief Judicial Magistrate, Kanpur Nagar. Aggrieved by it, the present appeal has been preferred.

2. It is contended that the appellant got the land from Triyugi Narayan Dubey, who has since died ; that he is owner and in possession of the land. The case of the respondents is that they have acquired the land and commercial complex has already been constructed, named ; 'Raina Market' ; that it was completed in the year 1992 consisting of 60 to 70 shops ; that there is also a library and reading room, known as 'Raina Library'. It was inaugurated on 2.6.1993 ; that, therefore, no injunction can be granted.

3. I have heard Sri Siddharth Verma, learned counsel for the appellant and Sri Lal Ji Sinha, learned counsel for the respondents.

4. The learned counsel has argued that it is a suit for injunction and in such a suit the parties should be directed to maintain strict status quo. The learned counsel in support of the argument has referred to the decision of Rahmullah and Ors. v. District Judge, Siddharthnagar and Ors., 1999 ACJ 533. In this case, it was observed that prima facie case does not mean that the plaintiff is certain to succeed ; that if triable Issues have been raised which require consideration, the temporary injunction should he granted. Similar view was in the Ram Kalap v. IV Additional District Judge, Gorakhpur and Anr. 1989 ACJ 13. It was held that if the suit is for permanent injunction and the matter is to be heard and decided, propriety demands that strict status quo be maintained between the parties. The third case referred to is Ram Dularey Pandey v. II Additional District Judge, Allahabad and Ors., 1995 (2) AWC 1105 : 1995 ACJ 551. It was observed in this case that parties should not be permitted to raise constructions on the Joint land and strict status quo should be maintained.

5. I have considered the authorities. I am of the view that none of these authorities are relevant in the present case. It appears that the commercial complex consisting of large numbers of shops, library and reading room have already been

constructed. A huge amount might have been spent by the respondents in the same. There is no justification to order that the respondents may not use the complex, which has been constructed.

6. The complex is alleged to have been constructed in the year 1992 and it was inaugurated in the year 1993. In the year 1999, when the construction was completed, the suit was filed. There is, therefore, no justification for issue of any interim Injunction during the trial of the case.

7. I do not find any illegality in the impugned order passed by the trial court.

8. The appeal is, therefore, without merit and is, hereby, dismissed. The stay order, if any, is vacated.

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