

HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR

S.B. Civil First Appeal No. 47/2022

Vijay Singh

----Appellant

Versus

Lrs of Late Sh. Ram Singh & Ors.

----Respondents

For Appellant(s) : Mr. Prashant Tatia

For Respondent(s) : Mr. J.K. Bhaiya

HON'BLE MS. JUSTICE REKHA BORANA

Order

31/05/2023

1. An application under Section 151 of the Code of Civil Procedure has been preferred on behalf of the appellant with the following submissions:

(i) An interim order was granted by this Court on 25.02.2022 vide which the parties were directed to maintain status quo with respect to the land in question but as because of the said interim order, the appellant could not complete the construction undertaken by him, an application for modification of the said interim order was preferred by him.

(ii) While deciding the said application, the Court, on 22.07.2022, proceeded on to vacate the interim order dated 25.02.2022 and directed the learned trial Court to proceed with the matter in accordance with law.

(iii) Now after passing of the said order, the respondents have moved an application before the learned trial Court for appointment of a Commissioner and therefore, an interim order deserves to be passed directing the learned trial Court to refrain

from passing the final decree as the present appeal is against the preliminary decree and if the final decree is drawn, the present appeal itself would render infructuous.

2. A reply to the application has been preferred on behalf of the respondents and it has been submitted that vide order dated 22.07.2022, while vacating the interim order dated 25.02.2022, this Court had specifically directed the learned trial Court to proceed with the matter in accordance with law. Meaning thereby, the stay petition, if any, stood rejected/disposed by the Court on that date even if the order does not have a formal reproduction of the same.

3. Learned counsel submitted that vide order dated 22.07.2022, the learned trial Court was directed to proceed with the matter in accordance with law and therefore, the learned trial Court is very well justified in proceeding to decide the application for appointment of Commissioner for the purposes of preparation of the final decree.

4. A perusal of the order dated 22.07.2022 makes it clear that vide the said order, this Court directed the learned trial Court to proceed in accordance with law. The said order was passed on 22.07.2022 and the present application under Section 151, CPC has been preferred on 17.04.2023, that is, after almost a year of the order dated 22.07.2022 having been passed.

5. At this stage, learned counsel for the appellant submitted that an appeal arising out of the same impugned judgment which is under challenge in the present appeal, has been preferred by two of the defendants, the same being S.B. Civil First Appeal No.252/2022 wherein an interim order has been passed by this

Court on 30.05.2023 and vide the said interim order, the effect, operation and execution of the impugned judgment and decree dated 24.01.2020 has been stayed.

6. In view of the fact that the impugned judgment and decree in question has already been stayed, may be in the appeal preferred by the other defendants, this Court is not inclined to pass any order on the application under Section 151, CPC as preferred by the appellant at this stage.

7. The application is therefore, disposed of. However, the appellant would be at liberty to file afresh if the situation so arise.

8. Let the appeal be listed on 20.07.2023.

(REKHA BORANA),J