

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

(1) S.B. Civil Writ Petition No. 3421/2023

Samar Shekhawat W/o Yogendra Singh Rathore, Aged About 51 Years, Resident Of 228, Hotel Shriram Heritage Sadulganj, Bikaner.

-----Petitioner

Versus

Jagmal Singh S/o Shri Udaysingh, Aged About 84 Years, Resident Of 228, Hotel Shriram Heritage Sadulganj, Bikaner.

-----Respondent

Connected With

(2) S.B. Civil Writ Petition No. 4574/2023

Jagmal Singh S/o Late Shri Uday Singh, Aged About 84 Years, R/o Plot No. A-228, Sadulganj, Bikaner, Rajasthan.

-----Petitioner

Versus

Samar Shekhawat W/o Late Shri Yogendra Singh Rathore, R/o Bikaner, Rajasthan.

-----Respondent

For Petitioner(s)	:	Mr. Loonkaran Purohit (respondent in SBCWP No.4574/2023)
For Respondent(s)	:	Mr. Vinay Jain with Mr. Manvendra Singh

JUSTICE DINESH MEHTA

Order

09/01/2024

S.B. Civil Writ Petition No. 3421/2023:-

1. Mr. Purohit, learned counsel for the petitioner (Samar Shekhawat) argued that the appellate Court has passed the impugned order on the basis of conjunctures and surmises.

2. He submitted that when the fact that the hotel is being run by the present petitioner (Samar Shekhawat) along with her husband late Shri Yogendra Singh, maybe with permission of the respondent (Jagmal Singh - owner of the property), there was no reason for the appellate Court to have passed the order impugned and permitting the respondent to take 70% of the total portion of the profit while leaving only 30% share for the present petitioner, who has to run the hotel.

3. Learned counsel argued that the hotel in question is being operated since 1996 and the present petitioner – a single lady, has lost her husband during COVID-19 and only source of her livelihood is the income from such hotel and, therefore, equity demands that her rights be protected given that the respondent is a retired army officer.

4. Mr. Jain, learned counsel for the respondent (Jagmal Singh) vehemently opposed petitioner's prayer by contending that admittedly the respondent (Jagmal Singh) is the owner of the property and even if, it is assumed that the hotel was being operated in such premises, the same was with the consent and permission of the respondent and the petitioner cannot operate the hotel but for his consent or wishes.

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

6. Admit.

7. Issue notice.

8. Mr. Jain, learned counsel for the respondent (Jagmal Singh) accepts notice.

9. Heard on stay application.

10. A perusal of para Nos.16 & 17 of the order dated 27.08.2022 passed by the trial Court reveals that a finding has been recorded that the hotel in question is being operated by the present petitioner/her husband. The trial Court has also recorded a finding that the owner of the property is the respondent (Jagmal Singh).

11. Hence, so long as operating rights of the hotel in question are concerned, the same would naturally go to the present petitioner, who is natural successor of late Shri Yogendra Singh, who used to operate the subject hotel with or without the petitioner.

12. It is to be noted that the hotel was being operated in the subject premises by the petitioner and her husband is not in dispute, and the subject suit has been instituted under the apprehension that the respondent would oust her and stop the business activities therein.

13. The suit in question is only a suit for injunction. The trial Court was, therefore, justified in injuncting the respondent from evicting the present petitioner without taking legal recourse.

14. The appellate Court, in the facts of the present case was not justified in bifurcating the income in the proportion of 70 : 30 to be distributed between Jagmal Singh and the present petitioner. No reason or basis has been provided. There is no express or implied partnership between the owner and the petitioner or her husband.

15. The effect and operation of the impugned order of the appellant Court dated 13.01.2023 is, therefore, stayed.

16. Resultantly, the order of the trial Court would continue till the disposal of the suit, subject to the following condition:-

(i) During the pendency of the present writ petition, petitioner (Samar Shekhawat) will have to pay a monthly amount as rent or compensation to the tune of ₹30,000/- to the respondent (Jagmal Singh).

17. List this case on 03.07.2024.

S.B. Civil Writ Petition No. 4574/2023:-

List this case on 03.07.2024 along with S.B. Civil Writ Petition No.3421/2023.

(DINESH MEHTA),J