

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

S.B. Civil Misc. Appeal No. 1510/2023

Narendra Singh S/o Shri Narpat Singh, Aged About 36 Years,
Resident Of Village Palasana, District Sikar (Raj.)

----Appellant

Versus

1. Jagmal Singh Rathore And Company Pvt. Ltd., Bhatiyon Ka Vas, Ward No. 8, Bikaner, Through Director Madho Singh Rathore.
2. Poonam Singh S/o Baksa Singh, By Caste Rajput, Behind Mataji Mandir, Behind Deora Builders, Ambedkar Colony, Bikaner.
3. Basanti W/o Poonam Singh, By Caste Rajput, Behind Mataji Mandir, Behind Deora Builders, Ambedkar Colony, Bikaner.
4. Mamta D/o Poonam Singh, By Caste Rajput, Behind Mataji Mandir, Behind Deora Builders, Ambedkar Colony, Bikaner.
5. S.h.o. Police Station, Jai Narayan Vyas Colony, Bikaner. (Raj.)
6. Deputy Registrar (First), Bikaner.
7. Deputy Registrar (Second), Bikaner.
8. Deputy Registrar, (Third), Bikaner.

----Respondents

For Appellant(s)	:	Mr. Madhav Vyas. Mr. Devi Singh Rathore.
For Respondent(s)	:	Mr. Muktesh Maheshwari. Mr. Kuldeep Prajapati for Mr. Rajesh Parihar.

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

(i) Arguments concluded on: 09/01/2026

(ii) Judgment reserved on: 09/01/2026

(iii) Full judgment/Operative part: Full judgment

(iv) Judgment pronounced on : 25/02/2026

1. The present miscellaneous appeal on behalf of the appellant-defendant No. 4 has been filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'the Code' hereinafter) against the Order dated 22.08.2023 passed by the Additional

District Judge No. 2, Bikaner In Civil Misc. Case No. 40/2023 (C.I.S. No.125/2023) titled as '*Jagmal Singh Rathore & Company Pvt. Ltd. vs. Poonam Singh & Ors.*', whereby application filed by the respondent No. 1-plaintiff under Order XXXIX Rules 1 and 2 of the Code was allowed and the appellant-defendant No. 4 was restrained from interfering with the possession of the respondent No. 1-plaintiff over land of Khasra No. 49, claimed to form part of Patta No.76, situated at Madan Vihar Colony, Vallabh Garden, Bikaner.

2. The facts relevant for disposal of the present appeal are that appellant-defendant No. 4 purchased land measuring 3,69,600 sq. ft. and 6,45,930.50 sq. ft., comprised in Patta No. 76, under two different registered agreements to sell dated 12.10.2022 from Shri Yatindra Singh Rathore, the power-of-attorney holder of Shri Chandra Shekhar Rathore, for a consideration of Rs. 55 lakhs and Rs. 95 lakhs. When the appellant attempted to enter upon the disputed land and erect fencing, he was allegedly obstructed by Bhawani Singh and Basanti Kanwar, who were having possession over some part of the land purchased by the appellant as a licensee for taking care of the said land. Consequently, the appellant instituted a suit for injunction, wherein an interim injunction was granted vide order dated 15.11.2022. Subsequently, respondent No.1-plaintiff filed a suit for permanent injunction against the present appellant and respondent Nos. 2 to 4 (defendant Nos. 1 to 3) and simultaneously filed an application under Order XXXIX Rules 1 and 2 of the Code, which came to be allowed by the trial court vide order dated 22.08.2023; the said order is impugned herein.

3. Learned counsel for the appellant has further argued that the suit property was validly purchased through registered agreements to sell and that Shri Yatindra Singh Rathore was duly authorised by a valid power of attorney executed by Shri Chandra Shekhar Rathore, empowering him to alienate the property in question. It has been contended that the trial court erred in granting injunction in favour of the respondent No. 1 while ignoring the material facts. It has been further submitted that the trial court, while deciding the application under Order XXXIX Rules 1 and 2 of the Code, recorded findings on possession in favour of the respondent No. 1, which was wholly unwarranted at the interlocutory stage.

4. Learned counsel for the appellant has further argued that the dispute relates to agricultural land bearing Khasra No. 49 and in view of Section 207 of the Rajasthan Tenancy Act, 1955, exclusive jurisdiction to try the dispute vests with the Revenue Court. The Civil Court, therefore, lacked jurisdiction to entertain the suit and pass an order of injunction, rendering the impugned order without jurisdiction and legally unsustainable.

5. In support of his submissions, learned counsel has placed reliance on the judgments of coordinate Benches of this Court in:

- (i) Chief General Manager, State Bank of India & Ors. v. Brij Mohan Shukla (S.B. Civil Revision Petition No.955/1999)**
- (ii) Kamal Kumar v. Bheru Bux & Ors.(S.B. Civil Writ Petition No.1357/2011)**
- (iii) Pyarelal v. Shubendra Pilania reported in 2019 3 SCC 692**

6. It has been further submitted by learned counsel for the appellant that the impugned order proceeds on an erroneous

assumption that Khasra No. 49 forms part of Patta No. 76. According to the appellant, Khasra No. 49 is an independent revenue parcel, separately recorded in the revenue records, and there is no document evidencing its merger or inclusion in Patta No. 76.

6.1. In the course of the hearing, certified revenue records have also been placed on record by the appellant by way of an additional affidavit to demonstrate that Khasra No. 49 is not reflected as part of Patta No. 76.

7. It was further contended that the impugned order suffers from a serious jurisdictional infirmity as the relief granted at the interim stage is identical to the final relief sought in the suit. The respondent No. 1-plaintiff has sought protection of possession in the plaint as well as in the application under Order XXXIX Rules 1 and 2 of the Code. By allowing the interim application and restraining the appellant, the trial court has effectively decided the core issue of possession, leaving nothing substantial to be adjudicated at trial.

8. *Per contra*, learned counsel for the respondent No.1 has challenged the validity of the power of attorney executed in favour of Shri Yatindra Singh Rathore. It was submitted that Shri Chandra Shekhar Rathore had already alienated the disputed land, which he had acquired from Rajmata Sudarshana Ji by virtue of a duly executed Will, and that the plaintiff-respondent thereafter purchased the land through a registered sale deed dated 12.02.2014. It was further submitted that the power of attorney was obtained by misrepresentation, misused for executing

unauthorised agreements to sell, and was subsequently cancelled by Shri Chandra Shekhar Rathore.

9. In support of the above contention, reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Suraj Lamp and Industries Private Limited v. State of Haryana and Ors. (2012) 1 SCC 656*** to contend that transfer of immovable property through GPA/PA transactions does not confer a valid title.

10. Learned counsel has also contended that Shri Chandra Shekhar Rathore categorically affirmed on affidavit that no land remained with him in Patta No. 76, the entire land having already been sold through registered sale deeds. It has been further contended that the appellant failed to file any suit for possession or cancellation of the respondent's registered sale deed, thereby acknowledging the respondent's title. Thus it has been urged that the trial court has rightly found that the respondent No.1 had established a prima facie case, the balance of convenience lies in his favour and denial of the injunction would cause irreparable loss. Hence, the impugned order dated 22.08.2023 suffers from no illegality or perversity and does not warrant interference in the present miscellaneous appeal.

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

12. The submissions and contentions raised are yet to be adjudicated by the learned Trial Court and shall be decided by the Trial Court in the course of trial. The scope of consideration before this Court is limited to examining whether the discretion exercised by the Trial Court in granting a temporary injunction is in

accordance with the settled principles governing the grant of a temporary injunction.

13. A perusal of the plaint and the application under Order XXXIX Rules 1 and 2 of the Code reveals that the interim relief sought is substantially identical to the final relief claimed in the suit, namely, protection and recognition of possession over the suit land.

14. For the sake of clarity and ready reference, the reliefs claimed in the main suit and in the application for temporary injunction are reproduced below :

Relief claimed in main suit

"कि इस आशय की चिरस्थायी निषेधाज्ञा बहक वादी खिलाफ प्रतिवादीगण के जारी कि प्रतिवादीगण संख्या 1 ता 4 स्वयं व प्रतिवादी संख्या 5 के सहयोग से वादी की खरीदशुदा पट्टाशुदा उपरोक्त पैरा संख्या 1 में वर्णित आसा पासा की भूमि में प्रवेश ना करे, कोई निर्माण सामग्री व डम्पर वादग्रस्त जायदाद पर न लगायें, उक्त भूमि में कोई किसी प्रकार का निर्माण ना करे, कोई तोड़फोड़ ना करे, वादी की भूमि में कब्जा ना करे, कोई किसी प्रकार का निर्माण ना करे, वादी के द्वारा अपनी भूमि के भोग उपयोग आव जाव में, निर्माण नवनिर्माण में कोई बाधा उत्पन्न नहीं की जाये तथा कोई ऐसा कृत्य अकृत्य ना करे जिससे वादी अपनी जमीन के विधि सम्मत अधिकारों से महरूम हो जाये। प्रतिवादी सं. 6 ता 8 के खिलाफ इस आशय की चिरस्थायी निषेधाज्ञा जारी की जावे कि प्रतिवादी संख्या 6 ता 8 वादी कम्पनी की उक्त भूमि के सम्बन्ध में अपने समक्ष प्रस्तुत होने वाले किसी भी प्रकार के हस्तान्तरण विलेख, विक्रय विलेख को स्वीकार ना करें, पंजीबद्ध ना करें।"

Relief claimed in temporary injunction application

"कि इस आशय की अस्थायी निषेधाज्ञा ताफैसला मूल वाद बहक प्रार्थी खिलाफ अप्रार्थी सं. 1 ता 4 इस आशय की जारी की जावे कि अप्रार्थीगण संख्या 1 ता 4 स्वयं व अप्रार्थी संख्या 5 के

सहयोग से प्रार्थी की खरीदशुदा पट्टेशुदा उपरोक्त पैरा संख्या 1 में वर्णित आसा पासा की भूमि में प्रवेश ना करे, कोई निर्माण सामग्री व डम्पर वादग्रस्त जायदाद पर न लगायें, उक्त भूमि में कोई किसी प्रकार का निर्माण ना करे, कोई तोड़फोड़ ना करे, प्रार्थी की भूमि में कब्जा ना करे, कोई किसी प्रकार का निर्माण ना करे, प्रार्थी के द्वारा अपनी भूमि के भोग उपयोग आव जाव में, निर्माण नवनिर्माण में कोई बाधा उत्पन्न नहीं की जाये तथा कोई ऐसा कृत्य अकृत्य ना करे जिससे प्रार्थी अपनी जमीन के विधि सम्मत अधिकारों से महरूम हो जाये। अप्रार्थी सं. 6 ता 8 के खिलाफ इस आशय की चिरस्थायी निषेधाज्ञा जारी की जावे कि अप्रार्थी संख्या 6 ता 8 प्रार्थी कम्पनी की उक्त भूमि के सम्बन्ध में अपने समक्ष प्रस्तुत होने वाले किसी भी प्रकार के हस्तान्तरण विलेख, विक्रय विलेख को स्वीकार ना करें, पंजीबद्ध ना करें।”

15. It is well settled that an order of temporary injunction is intended to preserve the status quo and prevent irreparable injury pending adjudication and not to confer substantive rights or grant final relief. An interim order which recognises or confers possession and effectively decides the main controversy amounts to virtually decreeing the suit at an interlocutory stage, which is impermissible in law.

16. This Court finds support for its view from the judgment rendered by a coordinate Bench of this Court in **Chief General Manager, State Bank of India and others v. Brij Mohan Shukla (supra)**. The relevant Para 3 of the judgment is reproduced as under :

“3. Admittedly, the plaintiff respondent has sought some relief in the plaint which has been asked for by him in the application under Order 39 Rules 1 and 2 Civil Procedure Code. By allowing the interim application under Order 39 Rules 1 and 2 Civil Procedure Code, the learned trial court has virtually decreed the main suit, and the learned appellate court has also not considered this aspect. In my considered opinion, it was incumbent upon the courts below to properly examine the pleadings before adjudicating upon the interim applications. No

interim relief, which ultimately decides the main controversy of the suit, can be granted while adjudicating upon the application under Order 39 Rules 1 and 2 of the Civil Procedure Code....."

16.1. The said principle has been reiterated by another coordinate Bench of this Court in **Kamal Kumar v. Bheru Bux & Ors. (supra)**. The relevant paras 2 & 3 of the judgment are reproduced as under:-

"2. In this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing the order dated 29.01.2011 (Annexure-6) passed by Additional Civil Judge (Jr. Div.), First Class No. 2, Bikaner as well as the order dated 07.02.2011 (Annexure-7) passed by Additional District Judge No. 2, Bikaner, whereby the appellate court while rejecting the appeal of the plaintiff-petitioner upheld the order of the trial Court. The trial court rejected the application filed under Order 39, Rules 1 and 2, read with Section 151, Civil Procedure Code, while holding that no final relief can be granted at the stage of deciding an application for temporary injunction.

3. After perusing both the orders impugned, I am of the opinion that the finding of the trial court and the appellate court to the effect that no final relief can be granted while deciding the application, is in accordance with basic principle of law. Hence, no case is made out for interference under Article 227 of the Constitution of India."

16.2. The respondent sought protection of possession both in the main suit and in the application under Order XXXIX Rules 1 and 2 CPC, and by granting such relief at the interim stage while recording findings recognising possession in favour of the respondent, the learned trial Court has, in effect, granted the very relief which was required to be decided only after a final adjudication. Applying the principles laid down in the cited judgments to the facts of the present case, this Court is of the

considered view that the trial Court exceeded the permissible limits of its interlocutory jurisdiction by granting interim relief that overlaps with the final relief. Such findings amount to a final adjudication and exceed the permissible scope of consideration under Order XXXIX, Rules 1 and 2 of the Code.

17. In view of the aforesaid conclusion that the impugned order warrants interference on the above limited ground, this Court deems it unnecessary to adjudicate upon the other grounds urged by the learned counsel for the parties

18. Having regard to the foregoing discussion, the trial court's order dated 22.08.2023 is hereby set aside, and the application filed under Order XXXIX Rules 1 and 2 of the Code is disposed of with a direction to the parties to maintain the status quo with respect to the land/property in question as it exists today.

19. The trial Court is expected to decide the main suit itself expeditiously, preferably within a period of eight months from today.

20. With the aforesaid observations, the present appeal stands disposed of.

21. The stay application and all pending application(s), if any, shall also stand disposed of.

22. It is clarified that nothing stated herein shall be construed as an expression on the merits of the case, and the trial Court shall decide the suit independently, uninfluenced by any observations made in this order.

(MUKESH RAJPUROHIT),J