

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 106/2024

- 1 Shri Munna @ Manwar Khan Son Of Shri Ghasi Khan, Resident Of Village Kayad, Tehsil And District Ajmer.
- 2 Shri Sethu Son Of Shri Sawai Khan, Resident Of Village Kayad, Tehsil And District Ajmer.(Since Deceased) Through Legal Representatives-
 - 2.1 Smt. Sharifan Wife Of Late Shri Sethu, Resident Of Village Babayacha, District Ajmer.
 - 2.2 Shri Usman Mohammad Son Of Late Shri Sethu, Resident Of Village Babayacha, District Ajmer.
 - 2.3 Shri Gulsher Son Of Late Shri Sethu, Resident Of Village Babayacha, District Ajmer.
 - 2.4 Shri Nafees Mohammad Son Of Late Shri Sethu, (Since Minor, Through Natural Guardian Mother Smt. Sharifan Wife Of Late Shri Sethu) Resident Of Village Babayacha, District Ajmer.

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Versus

- 1 Shri Shamnoor Son Of Shri Fattu Khan, Resident Of Bada Bera, (Aasama) Ki Dhani , Bavayacha, Tehsil And District Ajmer.
- 2 Nausar Wife Of Hari, Daughter Of Shri Bhanwarlal, Resident Of Chhatdi, Vaya Gagwana, Tehsil And District Ajmer.
- 3 Chauthi Wife Of Om, Daughter Of Bhanwarlal, Resident Of Shastri Nagar, Ajmer.
- 4 Smt. Sharda Wife Of Ramkaran, Daughter Of Bhanwarlal, Resident Of Village Ghughra, Tehsil And District Ajmer.
- 5 Smt. Manna Wife Of Gordhan, Daughter Of Bhanwarlal, Resident Of Village Akhari, Tehsil And District Ajmer.
- 6 Shri Bhagchand Son Of Bhanwarlal, Resident Of Village Akhari, Tehsil And District Ajmer.
- 7 Shri Suresh Son Of Bhanwarlal, (Since Minor Through Guardian And Brother Shri Bhagchand Son Of Bhanwarlal) Resident Of Village Kayad, Tehsil And District Ajmer.
- 8 Shri Mahendra Sen Son Of Shri Puslal Sen, Resident Of

Tabiji, Tehsil And District Ajmer.

- 9 Shri Jagpal Singh Son Of Harnam Singh, Resident Of Diggi Bazar, Ajmer.
- 10 Kanhaiyalal Son Of Shri Tuljaram, Resident Of Gurunanak Colony, Sukhadia Colony, Ajmer.
- 11 Smt. Manju Kanwar Wife Of Rajendra Singh, Resident Of House No. 64/50, Lohakhan, Police Line, Ajmer.
- 12 Ashwajeet Shekhawat Son Of Bhanwarsingh Shekhawat, Resident Of Ashok Nagar, Narishala Road, Ajmer.
- 13 Sub-Registrar, Ajmer, Sub-Registrar Office, Jaipur Road, Ajmer.

-----Respondents

For Appellant(s) : Mr. R.K. Agrawal Sr. Adv.
Mr. Adhiraj Modi

For Respondent(s) : Mr. Yashovadhan Agarwal
Mr. Aditya Sharma for
Mr. J.P. Gupta
Mr. Kshitij Jain on behalf of
Mr. Vigyan Shah AAG
Mr. Neeraj K. Tiwari
MR. S.N. Kumawat

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Date of hearing and conclusion of arguments	16.04.2026
Date on which the judgment was reserved	16.04.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	22.04.2026

1. The present civil miscellaneous appeal has been filed against the order dated 07.2.2023, passed by learned Additional District and Session Judge, No. 3, Ajmer, in Civil Misc. Case No. 85/2012, whereby the application for temporary injunction filed by the

plaintiffs-appellants under Order 39 Rule 1 and 2 read with Section 151 CPC has been dismissed.

2. Brief facts of the case are that the plaintiffs-appellants entered into an agreement to sell dated 25.08.2010 with defendant-respondent Nos. 2 to 5 for the purchase of their 2/3rd share in the land measuring 10 Bighas 10 Biswas, as described in the plaint, for a total consideration of Rs. 20,00,000/-. The entire sale consideration was paid at the time of execution of the agreement. The said agreement was executed and the consideration was received and acknowledged by defendant-respondent No. 1, Shri Shamnoor S/o Fattu Khan, acting as power of attorney holder pursuant to the power of attorney dated 08.05.2008 executed by defendant-respondent Nos. 2 to 5 and duly authenticated by a Notary Public.

2.1 Since defendant-respondent Nos. 2 to 5 did not cooperate in executing and registering the sale deed as agreed, the plaintiffs-appellants filed a suit for specific performance along with ancillary reliefs against defendant-respondent Nos. 2 to 5 and others, registered as Civil Suit No. 222/2012 before the Court of the learned Additional District Judge No. 3, Ajmer. In the said suit, the plaintiffs-appellants also filed an application for temporary injunction under Order 39 Rule 1 and 2 read with Section 151 CPC, seeking to restrain defendant-respondent Nos. 2 to 7 from alienating or transferring the suit land in any manner and from making any development or construction thereon, along with other ancillary reliefs.

2.2 In response to the said application, defendant-respondent Nos. 2 to 7 admitted the execution of the power of attorney as well as the agreement to sell. However, they contended that the attorney had not passed on the consideration amount of Rs. 20,00,000/- to them, and therefore, the agreement could not be enforced and the temporary injunction, as prayed for, ought not to be granted.

2.3 Defendant-respondent No. 1, in his separate reply, submitted that he was duly authorized under a notarized power of attorney dated 08.05.2008 to act on behalf of defendant-respondent Nos. 2 to 7 in all matters relating to the suit property, including its sale. He contended that, in exercise of such authority, he had validly executed the agreement to sell dated 25.08.2010 in favour of the plaintiffs-appellants after receiving the entire consideration of ₹20,00,000/-, and expressed his readiness to execute and register the sale deed.

2.4 Defendant-respondent Nos. 8 to 10, being purchasers prior to the alleged agreement to sell, submitted in their joint reply that they had acquired the entire land through registered sale deeds dated 10.08.2006 and were in lawful possession thereof. Relying on Mutation No. 233 dated 07.06.1999, they contended that the plaintiffs had no enforceable right as the defendants-sisters lacked khatedari rights and accordingly prayed for rejection of the temporary injunction application.

2.5 After hearing the parties, the learned Trial Court dismissed the application for temporary injunction vide order dated 07.12.2023.

3. Hence aggrieved by the same, the plaintiffs-appellants preferred the present civil misc. appeal before this Court.

4. Learned counsel for the appellants submitted that the impugned order dated 07.12.2023 is manifestly perverse, as it exhibits a complete lack of judicial approach, material irregularity, and illegality. The learned trial Court failed to consider the material facts pleaded by both parties and proceeded without proper examination of the case record, thereby arriving at a perfunctory conclusion.

4.1 Learned counsel for the appellants further submitted that the trial Court did not undertake a minimal requisite analysis of the facts, especially regarding the rights of the defendant-respondent Nos. 2 to 5 under the Hindu Succession Act, 1955 and the legal effect of mutation entries, revenue proceedings and decrees passed in regular suits. It ignored the essential legal and factual aspects, leading to a miscarriage of justice.

4.2 Learned counsel for the appellants contended that order dated 07.12.2023 erroneously assesses the prima-facie case without examining the pleading, evidence, and legal principles involved. It failed to appreciate that the defendant-respondent Nos. 2 to 5 had acquired indefeasible rights to their share immediately upon their father's death, which could not be neglected by revenue mutation entries or revenue decrees. He further contended that the trial Court misconstrued the implications of revenue entries, including mutation No. 233 and subsequent decrees, which were set aside or confined in regular revenue suits. It ignored the legal effect of these proceedings and

the law governing succession and property rights under the Hindu Succession Act.

4.3 Learned counsel for the appellants argued that the impugned order disregards settled legal principles that revenue mutations are for fiscal purposes only and do not determine rights of ownership. The trial Court failed to consider that the rights of the defendants-respondent Nos. 2 to 5 are protected by law and that the sale agreement and power of attorney were executed in accordance with legal requirements.

4.4 Learned counsel for the appellants further argued that the order dated 07.12.2023 is passed without proper discussion or analysis of the balance of convenience and irreparable injury. The plaintiffs-petitioners, who paid full consideration and acted bonafide, stand to suffer irreparable injury if the injunction is refused. Conversely, the defendants-respondents' claim is fraudulent and unsupported by lawful rights.

4.5 Learned counsel for the appellants submitted that the trial Court entered into a mini-trial by delving into disputed facts instead of examining the prima-facie case on record, thus exceeding its jurisdiction and neglecting the principles guiding temporary injunctions. He further submitted that the impugned order results in unjust deprivation of the plaintiffs-petitioners' rights and ignores the necessity to prevent multiplicity of proceedings and protect bonafide purchasers. Therefore, the order is contrary to the principles of equity and justice.

4.6 Learned counsel for the appellants urged that the present civil miscellaneous appeal may be allowed and the impugned order

dated 07.12.2023 be quashed & set aside and temporary injunction application may be allowed.

5. Per contra, learned counsel for the respondents submitted that the respondents have demonstrated that the disputed property was lawfully acquired through legitimate proceedings, with all requisite consideration having been paid and proper revenue records reflecting the rights of the respondents. He further submitted that the appellant's claim lack merit, as the orders passed by the competent authorities, including the order dated 07.12.2023, having been rendered after a meticulous examination of the facts and have rightly declined the interim injunction application.

5.1 Learned counsel for the respondents contended that the plaintiffs-appellants' assertions regarding agreement to sale after the sale deed in favour of defendant no. 8 to 10 are devoid of proof and are contrary to the established legal record. He further contended that the plaintiffs-appellants have failed to establish any prima-facie case to warrant interference at this stage.

5.2 In view of forgoing, learned counsel for the respondents prayed that the order dated 07.12.2023 may be upheld and the present civil miscellaneous appeal is liable to be dismissed.

6. Heard learned counsel for both the parties and perused the material facts available on record.

7. This Court finds that the fundamental issue in this case revolves around the alleged share in the disputed property and the validity of the agreement executed in favor of the plaintiffs-appellants. However, the documents on record, including the

orders passed in the series of litigation between the parties, establishes that as on the date of the agreement, defendant-respondent Nos. 2 and 5 did not hold the purported 4/6 share in the property. The order of the Divisional Commissioner dated 08.07.2009, which upheld the mutation and set aside the order of assistant collector, determined that defendant-respondent Nos. 2 and 5 had no rights over the property. This renders the plaintiffs-appellants' claim in regard to share of defendant no. 2 to 5 and the agreement to sell, to be not enforceable at this stage, as the legal foundation for their case is not *prima-facie* sustainable.

8. Furthermore, the series of judicial proceedings and appellate orders demonstrate that the rights over the property were thoroughly scrutinized and ultimately adjudicated against the plaintiffs-appellants and defendant Nos.2 to 5. The finality of these orders indicates that their claim lacks sufficient *prima-facie* strength to warrant the granting of an interim injunction. The agreement executed based on a purported share that was nullified by the appellate authority does not establish an immediate right to the property deserving of injunctive relief.

9. In addition, the Court considers the balance of convenience and the potential for irreparable harm. Granting a temporary injunction at this juncture would cause greater inconvenience to the defendants-respondents, who are in lawful possession. The plaintiffs-appellants fail to demonstrate any irreparable harm that cannot be addressed through ordinary legal remedies at a later stage. It is a well-established principle that injunctions should not be granted where the applicant's case is weak and the rights are

not clearly established, particularly when the case has been pending for an long period without interim relief.

10. The Court also notes that the fact, when asked from the counsel for appellant about any interim order during pending temporary injunction application, which was answered in negative. This court therefore has to be more cautious in granting injunction at this stage when the *prima-facie* case appears weak and where the balance of convenience does not favor the plaintiffs-appellants. The long pendency without interim relief further supports the view that maintaining the status quo until final adjudication is not prudent at this stage as there was no stay since filing of the suit in 2012 till the impugned order was passed.

11. In the case of ***Mandali Ranganna and Ors. vs. T. Ramachandra and Ors.***; (2008) 11 SCC 1, the Hon'ble Apex Court prescribed the criteria for temporary injunction as follows:

"21. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours

to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.”

(Emphasis supplied)

12. In the case of ***Skyline Education Institute (Pvt.) Ltd. vs. S.L. Vaswani and Ors.***; AIR (2010) 2 SCC 142, the Hon’ble Supreme Court held that interim injunctions should be decided on undisputed facts and available material, and interference is warranted only if the discretion exercised is perverse, erroneous, or results in manifest injustice. For proper appreciation, the relevant paragraph is reproduced hereunder:

“19. it necessary to observe that as the suit filed by the appellant is pending trial and issues raised by the parties are yet to be decided, the High Court rightly considered and decided the appellant's prayer for temporary injunction only on the basis of the undisputed facts and the material placed before the learned Single Judge and unless this Court comes to the conclusion that the discretion; exercised by the High Court in refusing to entertain the appellant's prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done to it, there will be no warrant for exercise of power under Article 136 of the Constitution.”

13. In view of above, based on the totality of the facts, legal principles, and judicial pronouncements, this Court finds that the plaintiffs-appellants have failed to establish a *prima-facie* case, and the balance of convenience tilts against them. Therefore, the application for temporary injunction was rightly rejected.

14. Consequently, the present Civil Miscellaneous Appeal is hereby **dismissed**, and the order dated 07.02.2023, passed by the learned Additional District and Sessions Judge No. 3, Ajmer, in Civil Miscellaneous Case No. 85/2012, is upheld.

15. Pending application(s), if any, stand disposed of.

16. Record of the learned trial Court be sent back forthwith.

(BIPIN GUPTA),J

Anand Tanwar/