

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil First Appeal No. 83/2022

Harpal Singh Kohli S/o Late Shri Gurbaksh Singh Kohli,

----Appellant

Versus

Shri Jasvant Veer Singh Kohli S/o Late Shri Gurbaksh Singh Kohli
& Ors.

----Respondents

For Appellant(s) : Mr. A.K. Bajpai Sr. Adv. assisted by
Mr. Nitesh Pareek

For Respondent(s) : Mr. R.K. Mathur Sr. Adv. assisted by
Mr. Mohd. Adil

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

04/04/2022

Appellant, by way of this first appeal, has assailed the judgment and decree dated 03.01.2022 passed by Additional District Judge No.6, Jaipur Metropolitan II whereby his suit for partition, declaration and permanent injunction has been dismissed and counter suit of respondent-defendant No.3 for possession has been decreed.

Counsel for respondent No.3 has raised objection of maintainability of one appeal.

It is not in dispute that both suits were consolidated before the trial Court vide order dated 06.02.2018 and thereafter a joint trial has commenced which culminated into one judgment and decree impugned herein. Hence one appeal challenging, the judgment and decree, deciding two consolidated suits, is found maintainable.

The dispute between parties in relation to immovable property pertains to partition, possession and permanent injunction. The first appeal is treated as continuation of suit and required to be heard on facts and law.

Admit.

Since, respondent No.3 has put in appearance, notices need not be issued to respondent No.3. Notices be issued to unserved respondents.

Counsel for appellant submits that respondent No.3 has initiated execution proceedings of impugned decree for possession passed in her favour to dispossess the appellant.

Respondent No.3 has filed reply to the stay application and does not dispute the initiation of execution proceedings. Counsel for respondent No.3 submits that in facts and circumstances of the present case, where the ownership of the suit property has been conferred on respondent No.3 and possession of plaintiff has been found as trespasser, it is not just and proper to stay the possession of appellant during pendency of first appeal.

Per contra, counsel for appellant submits that appellant is residing over the portion of suit property and his dispossession during pendency of first appeal would cause irreparable injury rather would be amount to rejection/dismissal of appeal. He submits that at the most, respondent No.3 decree holder may apply for mesne profit during pendency of first appeal.

Having heard both parties and considered facts and circumstances of the present case as also considering nature of dispute and nature of impugned decree for possession passed against appellant, it is hereby directed that appellant shall not

dispossess from the property in question during pendency of first appeal. However, respondent No.3-decree holder shall be at liberty to move an application for mesne profit claiming from appellant during pendency of appeal. Further both parties shall maintain status quo as to alienation and possession of property in question as it exists today.

With aforesaid observations, the stay application stands disposed of.

In view of passing order on stay application, application (No.1/2022) stands disposed of.

(SUDESH BANSAL),J

SACHIN/55



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