

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



S.B. Civil Writ Petition No. 5641/2022

URN: CW / 10986U / 2022

Rakesh Kumar Yadav S/o Shri Girdhari Lal Yadav, Aged About 33 Years, Resident Of Village Post Bisangarh, Tehsil Sahapura, District Jaipur. At Present Resident Of 50, Shriram Nagar - C, Jhotwara, Jaipur.

-----Petitioner

Versus

1. Smt. Mamta Sharma W/o Shri Laxmikant Sharma, Aged About 45 Years, Resident Of Plot No. 119, Shriram Nagar - A, Jhotwara, Jaipur.
2. Smt. Deepa Gajraj W/o Shri Vijay Singh Gajraj, Aged About 34 Years, Resident Of Plot No. 48, Durga Vihar D, Nangal Jaisa Bohra, Niwaru Road, Jhotwara, Jaipur.
3. K.n. Singh Rathore S/o Shri S.r. Singh, Resident Of Plot No. 81, Chandbihari Nagar, Khatipura Road, Jhotwara, Ward No. 38, Jaipur.
4. Bhairav Grah Nirman Sahakari Samiti Ltd., Jaipur Through President, Resident Of Motiya Ki Chabil, Shastri Nagar, Jaipur, Having Its Address At Bhairav Township Pvt. Ltd., Time Square, Room No. 222, In Front Of Shekhawati Hospital, Vidhyadhar Nagar, Jaipur.
5. Jaipur Nagar Nigam Greater, Through Mahapor, Address Lal Kothi, Jaipur Rajasthan.
6. Jaipur Development Authority, Through Commissioner, Having Its Address At Jln Marg, Jaipur, Rajasthan.
7. Deputy Commissioner, Zone 6, Jaipur Development Authority, Having Its Address At Jln Marg, Jaipur, Rajasthan.

-----Respondents

For Petitioner(s)	:	Mr. N.K. Maloo, Sr. Adv., Mr. Abhimanyu Singh Yaduvanshi, Mr. Ajay Singh Rajawat
For Respondent(s)	:	Mr. Devendra Kumar Bhardwaj Ms. Meemansa Sharma, Mr. Yogesh Kalla for Mr. Madhusudhan Purohit,

Mr. Sumit Choudhary on behalf of
Mr. Shyam Baba Khandelwal

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment / Order

Date of hearing and conclusion of arguments	25.05.2026
Date on which the judgment was reserved	25.05.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	02.07.2026

1. The present writ petition has been filed assailing the order dated 02.03.2022, passed by the learned Additional District Judge No. 2, Jaipur Metropolitan-II, Jaipur, in Civil Misc. Appeal No. 137/2021, whereby the appeal preferred by plaintiff-respondent No. 1 was allowed, and the order dated 30.09.2021, passed by the learned Civil Judge (West), Jaipur Metropolitan-II, in Civil Misc. (Temporary Injunction) Application No. 148/2020 rejecting the application under Order 39 Rule 1 and 2 CPC was set aside, and the parties were directed to maintain *status quo* with respect to the disputed plot.

2. The facts in a nutshell are that the plaintiff-respondent No. 1 instituted a suit in a representative capacity under Order 1 Rule 8 CPC seeking a declaration, permanent injunction, and mandatory injunction, along with an application for temporary injunction. It was averred that the plaintiff is the owner of Plot No. 31, Pratap Nagar Colony, purchased through a registered sale deed dated 24.06.2013 executed by one Urmila Devi. According to the

plaintiff, the allotment letter of the said plot had been issued by defendant-respondent No. 4, who had failed to submit the colony records to the Jaipur Development Authority (JDA). It was further alleged that the disputed passage constituted the only access road to the colony. The plaintiff further alleged that on 02.12.2020, defendant No. 1-petitioner attempted to raise construction over the public passage while claiming ownership on the basis of a registered sale deed executed by defendant-respondent No. 2, wherein the disputed land was shown as Plot No. 52, Shriram Nagar 'G'. The said plot had earlier been transferred by defendant-respondent No. 3 to defendant-respondent No. 2. It was also alleged that the patta issued by the JDA under the "Prashasan Shahron Ke Sang Abhiyan" was forged, fabricated, and void.

2.1 Thereafter, separate written statements were filed by defendant No. 1-petitioner and defendant-respondents No. 4 and 5, while defendant-respondents No. 6 and 7 filed a joint written statement denying the averments made in the plaint.

2.2 Upon hearing the parties and considering the material available on record, the learned Trial Court dismissed the application for temporary injunction vide order dated 30.09.2021.

2.3 Aggrieved thereby, plaintiff-respondent No. 1 preferred a Civil Miscellaneous Appeal, which was allowed by the learned Appellate Court vide order dated 02.03.2022, directing the parties to maintain *status quo* with respect to the disputed property.

3. Hence, the present writ petition has been preferred by defendant No. 1-petitioner challenging the aforesaid order dated 02.03.2022.

4. Learned counsel for the petitioner submitted that the order dated 02.03.2022 passed by the learned Appellate Court is illegal, contrary to the provisions of law, and unsupported by the material available on record. He further contended that the learned Appellate Court exceeded its jurisdiction and exercised powers not vested in it by law. Learned counsel argued that the scope of interference by the learned Appellate Court in an appeal against an order granting or refusing temporary injunction is limited, as such relief is discretionary in nature, and therefore, the learned Appellate Court ought to have been slow in interfering with the discretion exercised by the learned Trial Court. He also submitted that the learned Appellate Court failed to properly appreciate the documents placed on record by the petitioner.

4.1 Learned counsel further contended that the learned Appellate Court failed to consider the settled principle that a party seeking equitable relief must approach the Court with clean hands. It was submitted that the plaintiff herself owns Plot No. 50A situated in Shriram Nagar 'G' Colony, while Plot Nos. 53 and 54 belong to her husband and brother-in-law, respectively. In the site plans pertaining to those plots, Plot No. 52 is consistently shown as a plot and not as a public way. However, these material facts were deliberately suppressed by the plaintiff.

4.2 Learned counsel for the petitioner further submitted that the pattas were issued by the JDA in the year 2013 after inviting objections from the general public through a public notice published in newspapers. Despite being adjacent plot holders, neither the plaintiff nor her husband or brother-in-law raised any

objection. Learned counsel also pointed out that the application for regularisation (Niyaman) had been submitted by the Vikas Samiti of the colony residents and was signed by the plaintiff, her husband, and her brother-in-law. Therefore, the plaintiff had complete knowledge regarding the status of Plot No. 52 from the very beginning and never objected to it being treated as a plot. It was, therefore, argued that the suit is barred by limitation.

4.3 Learned counsel further submitted that the suit was instituted only after the petitioner demolished the existing structure for raising a new construction, whereupon the plaintiff suddenly alleged that the land in question constituted a public road. The photographs placed on record clearly demonstrate the existence of an old construction, which was subsequently demolished. These material aspects were duly appreciated by the learned Trial Court but were ignored by the learned Appellate Court. According to the petitioner, the delay in instituting the suit itself demonstrates that no public road ever existed and that the suit has been filed merely to harass the petitioner.

4.4 Learned counsel for the petitioner also submitted that the existence of construction stood established from the registered sale deed through which the petitioner purchased the plot, wherein it is specifically mentioned that construction existed over an area measuring 600 sq. ft. Further, the construction was also reflected in the JDA map. However, the learned Appellate Court failed to appreciate these material facts and instead relied upon false and fabricated documents allegedly obtained through an RTI reply from the Nagar Nigam and produced by the plaintiff.

4.5 Learned counsel for the petitioner further argued that the learned Appellate Court virtually exercised the jurisdiction of the Trial Court without recording any finding as to how the conclusions arrived at by the learned Trial Court were perverse or unsustainable. Consequently, the learned Appellate Court exceeded the limits of its appellate jurisdiction.

4.6 In view of the aforesaid submissions, learned counsel for the petitioner prayed that the present writ petition be allowed, the order dated 02.03.2022 passed by the learned Appellate Court be quashed and set aside, and the order dated 30.09.2021 passed by the learned Trial Court be restored, whereby the application for temporary injunction filed by the plaintiff was dismissed.

5. Per contra, learned counsel for respondent No. 1, while filing reply and written submissions, contended that the present writ petition under Article 227 of the Constitution of India is wholly misconceived and liable to be dismissed *in limine*. He submitted that the petitioner has failed to demonstrate any perversity, patent illegality, jurisdictional error, or arbitrariness in the impugned order passed by the learned Appellate Court. Learned counsel argued that the supervisory jurisdiction under Article 227 is limited in scope and does not permit re-appreciation of evidence or substitution of discretionary findings recorded by subordinate courts. The learned Appellate Court, after considering the pleadings, documents, and surrounding circumstances, rightly exercised its jurisdiction by directing maintenance of status quo over the disputed property during pendency of the suit.

5.1 Learned counsel for the respondent No. 1 further submitted that the dispute relates to alleged encroachment upon a public road/public utility land through forged and manipulated documents. The respondent-plaintiff is the owner of Plot No. 31 by virtue of a registered sale deed dated 24.06.2013, and in the site plan of society clearly depicts a 30-feet-wide road between Plot No.52 and 53. However, the said public passage was subsequently projected as Plot No. 52 through manipulation of Society records and allotment documents and thereafter transferred in favour of the petitioner. The learned Appellate Court rightly observed that the validity of the alleged patta and title documents requires adjudication after a full-fledged trial and appreciation of evidence, warranting interim protection of the property.

5.2 Learned counsel for the respondent No. 1 further contended that the material on record prima facie casts serious doubt on the authenticity of the allotment documents relied upon by the petitioner. The original Society records reveal that pattas were ordinarily issued under the signatures of "Gopal Lal" as President and "Shankarlal" as Secretary, whereas the disputed patta bears different signatures and does not contain any registration or patta number. Further, the original scheme and site plans of the Society clearly depict the existence of a public road between Plot Nos. 52 and 53, and records continue to stand in the name of Sawai Singh, the original allottee of Plot No. 52. In contrast, the alleged allotment in favour of "K.N. Singh Rathore" is vague and incapable of identifying any definite legal person, thereby rendering the petitioner's claim doubtful and suspicious.

5.3 Learned counsel for the respondent No. 1 also submitted that neither the Jaipur Development Authority nor the Jaipur Nagar Nigam has satisfactorily justified issuance of the disputed patta. Jaipur Nagar Nigam specifically stated that no permission for construction had ever been granted over the disputed land, while the JDA failed to disclose whether any physical inspection was conducted prior to issuance of the patta. He further submitted that even in judicial proceedings, it had been observed that pattas were wrongly issued during the camp process. Thus, the learned Appellate Court rightly concluded that the petitioner failed to establish any clear or undisputed right over the disputed property and that preservation of the property till final adjudication was necessary.

5.4 Learned counsel for respondent No. 1 further argued that the learned Trial Court had dismissed the injunction application without properly appreciating the documentary evidence and surrounding circumstances. However, the learned Appellate Court, upon detailed consideration of the inconsistencies in the allotment letters, site plans, and Society records, rightly found the existence of a strong prima facie case in favour of the respondent-plaintiff. The learned Appellate Court also observed that the disappearance of the public road from subsequent site plans remained unexplained and unsupported by any satisfactory documents produced by the petitioner or the Society.

5.5 Learned counsel for the respondent No. 1 further argued that the balance of convenience lies in favour of the respondent-plaintiff and the general public. If the temporary injunction were

vacated, the petitioner would proceed with construction over the disputed land, causing irreversible injury and rendering restoration of the property practically impossible. Such construction would also frustrate the pending civil proceedings, result in multiplicity of litigation, and permanently obstruct a public passage. On the other hand, the petitioner would suffer no irreparable loss by continuation of the *status quo* order, particularly when the legality of the patta and title documents remains pending adjudication before the learned Trial Court.

5.6 In view of the aforesaid submissions, learned counsel for respondent No. 1 prayed that the present writ petition be dismissed and the order dated 02.03.2022 passed by the learned Appellate Court be upheld.

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

7. Upon consideration of the record, this Court finds that the suit was instituted by respondent No. 1 seeking declaration, permanent injunction, and mandatory injunction. According to the plaintiff, she had purchased Plot No. 31 situated in Pratap Nagar, and a 30-feet-wide road connected Pratap Nagar with Shriram Nagar. It was further alleged that both Shriram Nagar 'C' and Pratap Nagar belonged to Bhairav Grah Sahkari Samiti Ltd. According to the plaintiff, the petitioner obtained a patta showing the disputed road as Plot No. 52 and was attempting to raise construction thereon.

8. The learned Trial Court, after elaborate consideration of the pleadings and material available on record, rejected the

application for temporary injunction vide order dated 30.09.2021. The appeal preferred by respondent No. 1 was allowed by the learned Appellate Court vide order dated 02.03.2022, directing the parties to maintain status quo.

9. This Court finds that Plot No. 52 was originally allotted by Bhairav Grah Sahkari Samiti Ltd. to one K.N. Singh Rathore vide allotment letter dated 15.07.1991, and thereafter the petitioner acquired the property through a valid chain of title. Furthermore, It is further evident that Plot No. 53, adjoining Plot No. 52, is owned by Vishnu Kant Sharma. The JDA patta issued in his favour clearly depicts Plot No. 52 adjacent to Plot No. 53, without showing any road between the two plots. It is also undisputed that Vishnu Kant Sharma is the brother of the plaintiff's husband, Laxmikant Sharma.

10. This Court further finds that the JDA also issued a patta in favour of Laxmikant Sharma, the plaintiff's husband, in respect of Plot No. 54. In patta of plot No. 53 belonging to Vishnu Kant Sharma dated 16.08.2013 plot No.52, 53 and 54 have been shown adjacent to each and in continuity without any road intervening between Plot Nos. 52 and 53. Significantly, the patta issued in favour of Vishnu Kant Sharma bears the signature of Laxmikant Sharma as a witness.

11. This Court also finds from a perusal of the record that the plaintiff had purchased Plot No. 50A from one Narangi Devi. It also appears from the record that the contention of the plaintiff-respondent to the effect that the signatures were not of the authorised representatives of the society is also misconceived, as

the signatures of the society members on the patta issued by the society in respect of disputed Plot No. 52, adjacent to Plot No. 53, are the same as those appearing on the patta issued by the society for Plot No. 54 in favour of Laxmikant, who is the husband of the plaintiff-respondent. In that view of the matter, the contentions raised by the plaintiff-respondent before the trial court are, prima facie, not supported by the documents on record.

12. This Court also finds that the contention of the plaintiff that the way existing between Plots No. 52 and 53 had been used for a long time by the members of the colony, and that in the year 2020 the defendant had tried to encroach upon the road, is found to be incorrect, for the reason that from the photographs placed before the trial court, it is clearly evident that the existing construction on Plot No. 52 was being demolished and a new construction was proposed to be raised. Further in the year 2013 itself the existence of Plot No.52 to be adjacent to Plot No.53 is found from JDA patta of plaintiff's husband's brother Vishnu Kant Sharma.

13. Further, the learned Trial Court had also found that in the audit conducted by the Registrar of Societies, and in the list sent on 19.07.1996, the existence of Plot No. 52 in favour of K.N. Singh Rathore, from whom the chain of title of the defendant-plot is derived, is recorded, which goes to show the existence of Plot No. 52 in the name of K.N. Singh Rathore since the year 1996.

14. This Court finds that the learned Trial Court elaborately considered each and every aspect of the matter in detail and, vide order dated 30.09.2021, rejected the temporary injunction application of the plaintiff-respondent. However, the learned First

Appellate Court committed an illegality in reversing the well-reasoned findings of the learned Trial Court and directing the defendant to maintain *status quo*.

15. This Court also finds that merely on account of the statement of counsel for respondent Nos. 5 and 6, the learned Appellate Court reversed the well-reasoned findings of the learned Trial Court. Whereas this Court finds that defendant Nos. 5 and 6, who are presently respondent Nos. 5 and 6, had filed a counter-reply to the writ petition, admitting the fact of issuance of the patta in favour of the defendant in respect of Plot No. 52, and further supporting that the patta had been validly issued to defendants, who is the petitioner herein, in respect of Plot No. 52. Further, it has been stated that, as per the records of the JDA, Plot No. 52 is adjacent to Plot No. 53. They have also admitted that there is no way existing between Plot No. 52 and Plot No. 53 in the plan approved by the JDA.

16. This Court finds that merely on the oral arguments of the counsel of respondent No.5 and 6, the learned First Appellate Court committed illegality without taking the facts on record through an affidavit.

17. Therefore, this Court finds that the learned First Appellate Court, while reversing the well-reasoned finding of the trial court passed in the order dismissing the application under Order 39 Rules 1 and 2 CPC, has committed a gross illegality in reversing the findings without consideration of the relevant documents and merely on the basis of the statements of learned counsel for respondent Nos. 6 and 7, whereas respondent Nos. 5, 6 and 7

before this Court have categorically filed counter-affidavits supporting defendant No. 1, the petitioner herein.

18. It is a settled principle of law that the learned Appellate Court should be very slow in interfering with findings, more so in matters relating to grant or refusal of injunction. This Court finds that the learned Appellate Court has committed an illegality in reversing the well-reasoned order of the trial court dismissing the temporary injunction application.

19. This Court finds that a plaintiff cannot be permitted to seek injunction in matters where documents right from the year 1996 up to 2013, and thereafter in 2017, exist, and no equity can be claimed in the year 2020 by challenging those documents.

20. Further, this Court is also of the view that once the contentions of the plaintiff-respondent were not supported by any documents except one map of the society, the facts show that from 1996 onwards there are continuous documents indicating the existence of Plot No. 52 adjacent to Plot No. 53, and Plot No. 53 belongs to the husband's brother of the plaintiff. The existence of Plot No. 52 adjacent to Plot No. 53 is duly recorded, and the same has been witnessed by the plaintiff's husband, Laxmikant. Further, the patta of the plaintiff's husband in respect of Plot No. 54 also shows the continuity of all the plots, i.e., 52, 53, 54 and 55, without any intervening road between Plot Nos. 52 and 53 as alleged.

21. Therefore, this Court finds that the learned First Appellate Court had committed illegality in passing the impugned order dated order dated 02.03.2022 and thus, this Court is of the firm

opinion that the order dated 02.03.2022 is liable to be quashed and set aside.

22. Consequently, the present civil writ petition is **allowed**, the order dated 02.03.2022 is quashed and set aside and the order dated 30.09.2021 is restored. The temporary injunction application stands dismissed. In addition to above, to avoid multiplicity of proceedings this Court deems it appropriate to direct the petitioner to not to alienate the property in dispute during the pendency of suit.

23. Accordingly, Civil Miscellaneous Stay Application No.5586/2022 and all other pending applications stand disposed of.

(BIPIN GUPTA),J