

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 7769/2024
URN: CW / 15775U / 2024

Shekhar Shivhare S/o Late Sh. Girishchandra Shivhare, Aged About 76 Years, R/o Plot No.48 Dhuleshwar Garden Sardar Patel Marg, Jaipur (Rajasthan)

----Petitioner

Versus

1. Rakesh Shivhare S/o Late Sh. Girishchandra Shivhare, Aged About 70 Years, R/o Plot No.48, Dhuleshwar Garden Sardar Patel Marg, Jaipur (Rajasthan)
2. Reeta Shivhare W/o Rakesh Shivhare, Aged About 69 Years, R/o Plot No.48, Dhuleshwar Garden Sardar Patel Marg, Jaipur (Rajasthan)

----Respondents

For Petitioner(s)	:	Mr. Ajatshatru Mina with Mr. Rajat Choudhary Mr. Vikhyat Vijayvargia
For Respondent(s)	:	Mr. R.K. Daga with Mr. Pankaj Soni Mr. M.L. Sharma

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

22/07/2026

1. The order under challenge is dated 02.05.2024 passed by the Civil Judge and Judicial Magistrate (South), Jaipur Metropolitan-I, dismissing the petitioner-plaintiff's application under Section 151 CPC bearing No.51/2023 and declining to petitioner to enter into the premises of respondents, for the purpose of carrying out maintenance/repairing of the outlets of his ACs and Coolers.

2. Heard learned counsel for both parties. Respondent No.1- Rakesh Shivhare, is present in person before this Court.

3. Petitioner No.1 and respondent No.1 are real brothers and got respective portion in House No. 48, Dhuleshwar Garden, Sardar Patel Marg, Jaipur, through Will dated 20.01.1997 executed by their father namely Late Shri Girish Chandra Shivhare. Respondent No.2 is wife of respondent No.1. Indisputably, a wall situated between two portions of this house, marked as E.P.O.Q. in the map annexed with the Will is common between both brothers. In this common wall, windows and protection of petitioner have opened towards the open space, which according to petitioner is common space for both but according to respondent No.1, same is part and parcel of the portion came in share of respondent No.1. Nevertheless, it is undisputed fact that in the windows opening on ground floor and first floor of the house of petitioner, three ACs and two Coolers are fixed which are being used by the petitioner. The outlets of these ACs and Coolers are situated towards open space and access to them, is possible by way of entrance of respondents' portion.

4. Petitioner moved an application under Section 151 CPC, stating inter alia that since maintenance/ repairing of his ACs and Coolers installed in the windows is required and for that purpose, he sought permission for the team of labours/mechanics of petitioner to enter into the premises of respondent No.1, in order to carry out maintenance/repairing of his ACs and Coolers. That application has been dismissed by the trial Court vide order dated

02.05.2024, not finding the prayer within scope of Section 151 CPC.

5. During course of arguments, a consensus has arrived at between parties that respondent No.1 shall permit the petitioner/team of labours/ mechanics of petitioner to enter in the open space with ladder and equipments to carry out maintenance/ repairing in three ACs and two Coolers of petitioner, during the period commencing from 23.07.2026 to 27.07.2026 in the day hours in between 10 AM to 4 PM. Therefore, in view of such consensus, order impugned dated 02.05.2024 is quashed and application of petitioner stands allowed.

6. It is made clear, as has also been agreed between both parties, that this permission to enter and to carry out the maintenance/repairing work granted in favour of petitioner shall not create any equity or any additional right in favour of petitioner nor shall affect the adjudication of civil suit and application for temporary injunction on merits by the trial Court so also counsel for both parties do agree that no new AC or Cooler shall be installed.

7. With the aforesaid directions/observations, instant writ petition is allowed. The impugned order dated 02.05.2024 is hereby set aside and application under Section 151 CPC filed by petitioner stands allowed in above terms.

8. Stay application and other pending application(s), if any, stand disposed of.

(SUDESH BANSAL),J