

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 186/2026

1.

Aruna Sharma Wife Of Sachindra Sharma, Resident Of
Neem Ka Thana, At Present R/o Gudhagaurji, Tehsil
Gudhagaurji, District Jhunjhunu (Raj.)
2.

Rajendra Prasad Son Of Late Maliram, Resident Of
Gudhagaurji, Tehsil Gudhagaurji, District Jhunjhunu (Raj.)
- Petitioners

Versus

1.

Shivshankar Son Of Prabhudayal, Resident Of
Gudhagaurji, At Pesent Resident Of Near Petrol Pump
Jhunjhunu Road, Gudhagaurji, Tehsil Gudhagaurji, District
Jhunjhunu (Raj.)
2.

Shrigopal, Son Of Bhawani Shankar,
3.

Shrikant, Son Of Bhawani Shankar,
4.

Sangeeta, D/o Bhawani Shankar,
5.

Yamuna D/o Bhawani Shankar, Nos. 2 To 5 All Residents
Of Gudhagaurji, Tehsil Gudhagaurji, District Jhunjhunu
(Raj.)
6.

Landlord Tehsil Udaipurwati, District Jhunjhunu (Raj.)
7.

Sub Registrar, Sub Registrar Office, Sub Tehsil
Gudhagaurji, District Jhunjhunu (Raj.)
8.

State Of Rajasthan, Through District Collector, Jhunjhunu
(Raj.)
- Respondents

For Petitioner(s)

:

Mr. Dhanraj Bhaskar with
Mr. Vijay Gaur

For Respondent(s)

:

Mr. Arun Singh Shekhawat with
Mr. Kuldeep Singh

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment / Order

Date of hearing and conclusion of arguments	29.01.2026
Date on which the judgment was reserved	29.01.2026
Whether the full judgment or only the operative	Full Judgment

part is pronounced	
Date of pronouncement	09.02.2026

1. The present writ petition has been filed assailing the order dated 13.11.2025, passed by learned Additional District Judge No.1, Jhunjhunu, in Civil Miscellaneous Appeal No.05/2024 (CIS 31/23), whereby while allowing the appeal as preferred by the defendant-respondent, the learned Appellate Court set aside the order dated 03.06.2023, passed by learned Civil Judge Udaipurwati, District Jhunjhunu, in Civil Miscellaneous Case No. 36/2022, wherein the temporary injunction application filed by the plaintiff-appellant under Order 39 Rule 1 and 2 CPC was allowed.
2. Brief facts of the case are that a suit for declaration, permanent injunction and for correction of entries in the record was filed before the learned Trial Court. Along with the suit, an application for temporary injunction was also filed contending *inter alia* that certain land of Khasra No.234 situated in the Suratramka area which belonged to Smt. Laxmi Devi w/o Ganesh Narayan may be protected during the pending suit.
3. It was further pleaded that Smt. Kamli Devi was the only daughter of Late Smt. Laxmi Devi and Shri. Ganesh Narayan and they had no other successor. It was further pleaded that Late Smt. Laxmi Devi and Shri. Ganesh Narayan had not taken any child in adoption. However, one Prabhu Dayal in collusion with the Sarpanch got mutated the entries pertaining to the land of Late Smt. Laxmi Devi in his favour, while claiming himself to be his adopted son. It was further claimed that Smt. Kamli Devi had executed a registered Will on 05.04.1969, and the entire disputed property was given to Late Shri. Mali Ram and thus, after his

death, his successors were entitled to the property in dispute. Therefore, on the basis of these pleadings, it was claimed that the property in question is the parental property of the plaintiff. In the suit, the final relief claimed was that property of Khasra No. 234 Rakba 5 Bigha 4 Biswa may be declared as the property of Late Shri Mali Ram, which he had received by Will dated 05.04.1969 from Kamli.

4. It was further prayed that a decree of permanent injunction may be issued in respect to the half share of land which has come in the share of the plaintiff, and the defendants may be restrained from interfering with the peaceful possession of the property. In the temporary injunction application, it was prayed that during the pending suit, the defendants may be restrained from alienating the property in dispute and from raising any construction in the disputed property either themselves or through any agent.

5. The defendants-respondents, filed a reply, denying the averments of the plaint and contended that the basis on which the plaintiff is claiming share in the property is a "Will" which has been executed by Smt. Kamli Devi d/o Smt. Laxmi devi w/o Shri. Tansukh, whereas in the revenue records, the land of new Khasra No.156 has been recorded in name of Smt. Laxmi Devi w/o Shri. Ganesh Narayan. It was further contended by the defendants that for a correction in the revenue records and for declaration of *khatedari* rights, a Civil Suit is not maintainable and, therefore, prayed that the temporary injunction application may be rejected.

6. The learned Trial Court vide order dated 03.06.2023, allowed the temporary injunction application with a finding that a *prima*

facie case and balance of convenience exist in favour of the plaintiff and ordered that the parties shall maintain *status quo* in regard to the site as well as record of the disputed property.

7. The said order was challenged by the defendants No. 5, in case bearing Civil Miscellaneous Appeal No.5/24, and the learned Appellate Court vide order dated 13.11.2025, reversed the finding of the learned Trial Court and rejected the temporary injunction application.

8. Aggrieved by the said order, the present writ petition has been filed by the plaintiffs-petitioners.

9. Learned counsel for the petitioners-plaintiffs submitted that the learned Trial Court had elaborately considered the disputed question of fact between the parties and have found that there is a *prima facie* case in favour of the plaintiffs and observed that the same requires to be adjudicated by way of evidence during the suit proceeding and also arrived at a finding that balance of convenience exist in favour of the plaintiff. Thus, the temporary injunction application was rightly allowed by the learned Trial Court vide order dated 03.06.2023.

10. Learned counsel for the petitioners further contended that the learned Appellate Court by surmises and conjectures has reversed the finding of the learned Trial Court and, therefore, submitted that the order dated 13.11.2025 may be quashed and set aside and that the order dated 03.06.2023 be restored.

11. Per contra, learned counsel for the respondents-defendants submitted that the learned Trial Court had committed illegality while passing the order dated 03.06.2023 and, therefore, the

learned Appellate Court has rightly reversed the said order and had passed the order dated 13.11.2025.

12. Learned counsel for the respondents also submitted that the plaintiffs-petitioners are in the writ jurisdiction and the scope of writ petition under Article 227 of the Constitution of India is very limited. Thus, there being no perversity or illegality in the order of Appellate Court dated 13.11.2025, prayed that the present writ petition may be dismissed.

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

14. On perusal of the material available on record, this Court finds that the claim of the plaintiffs-petitioners is that the property in dispute came to Late Shri. Mali Ram by way of a "Will" dated 05.04.1969, executed by Smt. Kamli Devi. It is alleged that Smt. Kamli Devi was the daughter of Smt. Laxmi Devi and Shri. Ganesh Narayan. However, the respondents-defendants have contended that the said Smt. Kamli Devi was not the daughter of Smt. Laxmi Devi wife of Shri. Ganesh Narayan. According to them, Smt. Kamli Devi was the daughter of another Laxmi Devi, who was the wife of Shri Tansukh.

15. This Court therefore, called upon both the parties to file affidavit to the effect of status of Smt. Kamli Devi. The plaintiffs-petitioners herein filed an affidavit dated 27.01.2026 whereby, it was stated by the plaintiffs-petitioners that Smt. Laxmi Devi was first married to Shri. Tansukh and by way of the said wedlock, a daughter namely Kamli Devi was born. After the death of Shri. Tansukh, somewhere in the year 1935-1940, Smt. Laxmi Devi got

married to Shri. Ganesh Narayan. It was also stated in the affidavit that Shri. Ganesh Narayan was also a widower as his first wife Mrs. Bakhtawari had died. It was further stated in the affidavit that Shri. Ganesh Narayan expired in the year 1953–1954, and thus it was stated on oath that Smt. Laxmi Devi, wife of Shri Tansukh, and Smt. Laxmi Devi, wife of Shri. Ganesh Narayan, are one and the same person and not two different persons.

16. On the other hand, in the affidavit filed by the respondents-defendants stated on oath that Smt. Laxmi Devi wife of Shri. Tansukh and Smt. Laxmi Devi wife of Shri Ganesh Narayan are two different persons. It was further stated that, in the revenue records, Shri. Ganesh Narayan was recorded as *khatedar* and after death of Shri. Ganesh Narayan, the name Smt. Laxmi Devi was recorded. It was further stated that from Smt. Laxmi Devi and Shri. Ganesh Narayan, four daughters were born and from their daughter namely Smt. Badami, one Prabhudayal was born. Smt. Laxmi Devi took Shri. Prabhudayal in adoption and after death of Smt. Laxmi Devi, Shri. Prabhudayal, being her successor has been recorded as *khatedar*. However, at one point of time, Smt. Kamli Devi was wrongly recorded in half share in the property of Smt. Laxmi Devi, which after conducting an inquiry was corrected. Thus, as per defendant respondent Smt. Laxmi Devi, wife of Shri. Tansukh, and Smt. Laxmi Devi, wife of Shri. Ganesh Narayan, are two different persons. It was further contended that there was no daughter named Smt. Kamli Devi born to Smt. Laxmi Devi wife of Shri. Ganesh Narayan.

17. On perusal of the affidavits filed by the parties on record and record of certain litigation before the learned Revenue Court, this Court finds that the issues for consideration are *firstly*; whether Smt. Kamli Devi is the daughter of Smt. Laxmi Devi, wife of Shri Tansukh, and *secondly*; whether Smt. Laxmi Devi, wife of Shri Tansukh, and Smt. Laxmi Devi, wife of Shri Ganesh Narayan, are one and the same person or two different persons.

18. This Court is of the firm opinion that the disputed questions of fact involved in the present case are of nature which can be adjudicated only through the evidence of the parties during trial. Further, this Court on perusal of record finds that the application of one of the defendants-respondents under Order 7 Rule 11 CPC has been rejected on 02.09.2022 and the order on temporary injunction application was passed by the learned trial court on 03.06.2023. Moreover, if any other application is pending under Order 7 Rule 11 CPC, then the subsequent application under Order 7 Rule 11 CPC, cannot stall the proceedings in the temporary injunction application and the learned Appellate Court was wrong in holding that till the application of Order 7 Rule 11 CPC is not decided, the temporary injunction application cannot be decided. In the present case already one of the applications under Order 7 Rule 11 CPC has been decided prior to passing of an order on the temporary injunction application.

19. *Prima facie*, at this stage, on perusal of the record, this Court finds that the property in dispute, admittedly recorded in last undisputed entries in name of Smt. Laxmi Devi, is claimed by Shri. Prabhudayal in the affidavit stating that he is the son of Smt.

Badami Devi (who is daughter of Smt. Laxmi Devi wife of Late Shri. Ganesh Narayan) and was adopted by Smt. Laxmi Devi. It is also not disputed between the parties that at certain point of time, Shri. Prabhudayal and Smt. Kamli Devi were recorded as half share-holders of the property, after death of Smt. Laxmi Devi widow of Shri. Ganesh Narayan.

20. Looking to the fact that Smt. Kamli Devi was recorded as half-shareholder of the property, at one point of time as submitted in the affidavit by respondent, this Court finds that the issue is required to be adjudicated during trial by way of evidence as to whether Smt. Laxmi Devi w/o Shri. Tansukh and Smt. Laxmi Devi w/o of Shri. Ganesh Narayan is one person or are two different persons.

21. This Court also finds that the law is well settled, under Order 39 Rule 1 and 2 CPC, the Court is required to protect the property in dispute during the pendency of the suit, if a *prima facie* case exists in favour of the plaintiffs. It is also a settled principle of law that a discretionary order passed by the learned Trial Court in favour of the plaintiffs-petitioners under Order 39 Rule 1 and 2 CPC, dated 03.06.2023, ought not to have been interfered with by the learned Appellate Court in a routine manner, nor it could pass a final verdict on issue which is required to be decided in evidence. Since the appellate court has given a final verdict that the Smt. Laxmi Devi w/o Shri. Tansukh and Smt. Laxmi Devi w/o Shri. Ganesh Narayan is two different persons. Therefore, this Court finds that the order dated 13.11.2025 cannot be sustained in the eyes of law.

22. For the reasons mentioned above, the order dated 13.11.2025 passed by learned Appellate Court is hereby, quashed and set aside. The order of the learned trial Court dated 03.06.2023 is restored.

23. With the above observations, the present civil writ petition stands disposed of.

24. Pending application(s), if any, also stands disposed of.

(BIPIN GUPTA),J

Sudha/2