

(2020) 09 RAJ CK 0083

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3105 Of 2018

Nafees Ahmed And Ors

APPELLANT

Vs

Hamida Bano And Ors

RESPONDENT

Date of Decision : 11-09-2020

Acts Referred:

Citation : (2020) 09 RAJ CK 0083

Hon'ble Judges : Mahendar Kumar Goyal, J

Bench : Single Bench

Advocate : Sudesh Bansal, Amitabh Jatav, Deepak Chauhan, Sangita Sai

Final Decision : Dismissed

Judgement

This civil misc. appeal has been preferred against the order dated 01.06.2018 whereby the learned Additional District Judge, No.05, Jaipur Metropolitan, Jaipur has dismissed the temporary injunction application filed by the appellants-plaintiffs.

The facts in brief are that the appellants have filed a suit for partition and permanent injunction against the respondents- defendants claiming partition of the properties, as enumerated in the plaint, claiming the same having been purchased either by late Habibuddin Khan himself or out of the properties left by him in the name of the respondents. The temporary injunction application filed along with the suit has been dismissed by the learned trial Court vide its order dated 01.06.2018 which has been impugned herein.

Confining his submission to the House no. 3920, Topkhana Ka Rasta, Jhule Walon Ki Gali, Chandpole Bazar, Jaipur, one of the properties in question, learned counsel for the appellants contended that they have specifically claimed the property in question having been purchased by their late father Mr. Habibuddin Khan from his self acquired income and have also claimed a portion of the same under their possession which was not specifically disputed and denied by the respondents in their reply to the temporary injunction application. He submits

that ignoring this vital aspect of this matter, the learned trial Court has rejected their temporary injunction application which deserves to be quashed and set aside. He submits that this Court has, vide its order dated 03.11.2018, already passed an interim order not to alienate or create third party interest or encumber the aforesaid House no. 3920, which is continuing till date and prays for its confirmation till disposal of the suit in addition to protection of their possession in part of the House.

Learned counsel appearing for the respondents submits that the appellants were separated by their late father during his life time giving them a fixed amount and hence, the learned trial Court has committed no error in dismissing the temporary injunction application.

Heard the learned counsels for the parties and perused the record.

A perusal of the averments made in the temporary injunction application and its reply by the respondents reveals that there is no specific denial as to the averment of the appellants being in possession of a part of the House no.3920.

The submission in the reply with regard to ousting the share of the appellants from the properties in question giving a fixed amount, is very vague and bald. It is trite that in dispute involving the immovable property, the parties should generally be directed to maintain status quo unless a party is able to show irreparable injury being caused to him on account of interim order.

The Hon'ble Supreme Court has, in case of Maharwal Khewaji Trust, Faridkot Vs. Baldev Dass- AIR 2005 SC 104, held as under:-

"10. Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings."

The respondents have failed to make out a case of irreparable loss to them in case any interim order is passed qua the house in question. In view thereof and also in view of the fact that there is no specific denial by the respondents in their reply to the temporary injunction application as to the appellants being in possession of the part of the House no. 3920 and there is already an interim order by this Court operating since 03.11.2018 restraining the parties from alienating/creating any third party right or encumbering the property of House no. 3920 till date, this Court deems it just and proper to make the order dated 03.11.2018 absolute till disposal of the civil suit as well as restrain the respondents from dispossessing the appellants from a part of the house under their possession during pendency of the suit.

The order dated 01.06.2018 is quashed and set aside to the aforesaid extent. The civil misc. appeal stands partly allowed. In Application no.1/2019:-

Learned counsel for the appellants wants to withdraw the application.
The application stands dismissed as withdrawn.