

(2014) 04 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1034/2013

Prem Chand Jain

APPELLANT

Vs

Harish Kumar Ahuja and Others

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2015) 3 WLN 21

Hon'ble Judges : Amitava Roy, C.J.;Vijay Bishnoi, J

Bench : Division Bench

Advocate : Sanjeev Johari, Advocate for the Appellant; Sachin Acharya, Advocate for the Respondent;

Final Decision : Disposed off

Judgement

1. Heard learned counsel for the parties. For the order proposed to be passed, we do not consider it necessary to issue notice to the other respondents.
2. Dr. Acharya has at the threshold raised an objection with regard to the maintainability of the instant appeal contending that under Rule 134(1) of the Rajasthan High Court Rules, 1952, the same is not permissible against the order impugned rendered in exercise of the powers under Article 227 of the Constitution of India. An order Dt. 13.09.2013 passed by the Division Bench of this Court in D.B. Civil Special Appeal (Writ) No. 269/2013 (Uttam Chand @ Uttam Kumar & Anr. v. Smt. Kuldeep Devi & Anr) has been laid before us to this effect.
3. Mr. Johari while refuting this submission, however, has urged that in case the instant appeal is held not maintainable, it may be disposed of with the observation that the learned Court(s) below while deciding the suit/appeal on merits ought not to be guided/influenced by the comments made in the judgment and order impugned herein.
4. After hearing the learned counsel for the parties, we are of the opinion that

the instant appeal is not maintainable under Rule 134(1) of the Rajasthan High Court Rules, 1952. However, bearing in mind that the suit between the parties is pending and awaits adjudication on merits, we consider it appropriate to accede to the prayer made in the alternative as above on behalf of the appellant. This appeal is, thus, disposed by mentioning that the learned Court(s) below while adjudicating the suit/appeal would decide the same on merits in accordance with law without being prejudiced by the observations made in the impugned judgment and order Dt. 15.04.2013 rendered in S.B. Civil Writ Petition No. 11189/2011. Subject to the above, the impugned judgment and order is sustained so far as it pertains to the issue of injunction at this stage.