
(2017) 02 RAJ CK 0092
In the Rajasthan High Court
Case No : 594 of 2017

Smt. Khetu Devi W/o Shri Babulal

APPELLANT

Vs

Jetharam S/o Late Shri Kanaram

RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 39Rule 1](#), [Order 39Rule 2](#)

Citation : (2017) 02 RAJ CK 0092

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : D.D.Chitlangi, ?Ashwini Sharma

Final Decision : Disposed

Judgement

1. Heard learned counsel for the parties.
2. The present Misc. Appeal has been filed challenging the order dated 05.12.2016, passed by the District Judge, Bikaner in Civil Misc. Case No.260/2016, whereby the Court below has passed an interlocutory order restraining the parties from selling, transferring or mortgaging the disputed property.
3. Mr. Chitlangi, learned counsel for the appellant has submitted that the order under challenge does not meet the ends of justice inasmuch as if the ongoing construction is not stopped, it would adversely affect the right of the petitioner. The learned Court below ought to have restrained the respondents-defendant from carrying on construction.

4. Having heard learned counsel for the parties and taking into account the nature of the suit filed by the plaintiff i.e. suit for partition and perpetual injunction, this Court is of the considered view that the interlocutory order, in the manner passed is perfectly just and proper in the facts of the present case. No fruitful purpose would be served by restraining the parties from raising construction, which is on the verge of completion.

5. In view of the present factual matrix, this Court does not want to interfere in the interlocutory order dated 05.12.2016, passed by the learned Trial Court.

6. It is however made clear that rival parties shall not claim any equity or rights arising from continuation of the construction being raised by the respondents. Modification or affirmation of the order dated 05.12.2016, by this Court, will not come in the way of the learned Trial Court, while finally deciding the application under Order 39 Rules 1 & 2 CPC.

7. Appeal stands disposed of accordingly.