

In the High Court of Judicature for Rajasthan
at Jaipur Bench Jaipur

S. B. Civil Writ Petition No. 1198/2012
Kanchan Singh

VS.

Rajendra Singh and ors

Date of Order : 31.1.2012

HON'BLE MS. JUSTICE BELA M. TRIVEDI

Mr. Anil Jain for the petitioner

By the Court:

1. Heard learned counsel for the petitioner.
2. The petitioner has challenged the legality and validity of the order dated 1.5.2009 passed by the trial court, and the order dated 11.11.2011 passed by the appellate court, whereby the application of the petitioner (original-plaintiff) filed under Order 39 Rules 1 and 2 of CPC was partly allowed by the trial court and confirmed by the appellate court.
3. It appears that the petitioner-plaintiff has filed the suit for permanent injunction against the respondent-defendant in respect of the disputed land. The petitioner had also moved an application under Order 39 Rules 1 and 2 of CPC seeking temporary injunction, which was partly allowed by the

trial court vide order dated 1.5.2009, restraining the respondent-defendant not to cause any obstruction in the lane upto four feet width, however, restrained the plaintiff from causing any obstruction to the defendant in making construction over the disputed land. Being aggrieved by the said order, the petitioner-plaintiff had filed an appeal, which has been dismissed by the appellate court vide order dated 11.11.2011. Being aggrieved by the same, the petitioner has invoked the supervisory jurisdiction under Article 227 of the Constitution of India of this court by way of present petition.

4. It has been submitted by learned counsel for the petitioner that the petitioner-plaintiff is the owner of the disputed land and the respondent-defendant cannot be permitted to raise any construction thereon. According to him, the petitioner came to know about the purchase of disputed land by the respondent only from the written statement filed by the respondent and therefore the petitioner had challenged the same by filing the rejoinder. He also submitted that unless the ownership rights

over the disputed land are decided by the trial court, the respondent should not be permitted to raise any construction.

5. Having regard to the submissions made by learned counsel for the petitioner and to the impugned order passed by the trial court as well as by the appellate court, it transpires that both the courts below have permitted the respondent-defendant to raise the construction relying upon the registered sale deed executed in favour of the respondent by the original owner and in view of the permission granted by the competent authority to raise the construction. There being concurrent findings of facts recorded by both the courts below, this court is not inclined to exercise the jurisdiction under Article 227 of the Constitution of India. The learned counsel for the petitioner has submitted that he be permitted to challenge the said sale deed allegedly executed in favour of the respondent by making amendment in the plaint. It is needless to say that the petitioner could make such application for amendment, if permissible under the law, and the trial court may pass appropriate

order if such application is made, in accordance with law. There being no illegality and infirmity in the orders passed by by the courts below, the present petition deserves to be dismissed and is accordingly dismissed.

(BELA M. TRIVEDI) J.

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All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Om Prakash

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