

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 4777/2017

1. Manoj Devnani S/o Ashok Devnani, R/o Plot No. 19/19, Sudhasagar Colony, Faisagar Road, Ajmer
2. Smt. Manju Devnani W/o Shri Manoj Devnani, R/o Plot No. 19/19, Sudhasagar Colony, Faisagar Road, Ajmer

----Appellants

Versus

1. Ashok Devnani S/o Purshottam Das Devnani Through Shri Sanjay Hasani S/o Shri Harish Hasani, R/o Plot No. 22, Tarabhawan, In Front Of Abhinandan Gargen, Sudha Sagar Colony, Faisagar Road, Ajmer.
2. Smt. Reshma Hasani W/o Shri Sanjay Hasani And D/o Shri Ashok Devnani, R/o Plot No. 22, Tarabhawan, In Front Of Abhinandan Gargen, Sudha Sagar Colony, Faisagar Road, Ajmer.
3. Vasudev Devnani S/o Ratanmal Devnani Sindhi, R/o 78, Pratap Nagar, Khatipura Road, Vaishali Nagar, Jaipur.

----Respondents

For Appellant(s)	:	Mr. Alok Chaturvedi
For Respondent(s)	:	Mr. Atul Saxena

HON'BLE MRS. JUSTICE SABINA

Judgment

30/04/2019

Appellants have filed this appeal challenging the order dated 22.08.2017 passed by the trial court, whereby, application moved by the appellants under Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908 (hereinafter referred as "C.P.C."), for grant of relief of temporary injunction, was dismissed.

Learned counsel for the appellants has submitted that appellants had been sending money from Africa to deceased Asha

Devnani for purchase of properties-in-question in their name. However, Asha Devnani (mother of appellant No. 1) purchased the properties in her own name. Appellants have now filed the suit for partition and have also challenged the will executed by deceased Asha Devnani in favour of her husband (respondent No.1). Hence, respondents were liable to be restrained from further alienating the suit property.

Learned counsel for the respondents has opposed the appeal.

Appellants have filed suit for partition, declaration, permanent and mandatory injunction with regard to three properties-in-question. Along with the suit, an application for temporary injunction was filed by the appellants. Vide impugned order, the said application was dismissed by the trial Court. Hence, the present appeal.

At the time of deciding the application for temporary injunction, trial Court is required to consider as to whether, the plaintiff has *prima facie* case or balance of inconvenience in his favour and further consider that in case, relief of temporary injunction is not granted whether, the plaintiff would suffer an irreparable loss.

In the present case, properties-in-question were in the name of Asha Devnani. Asha Devnani has died on 01.03.2016. During the course of arguments, it has transpired that the properties-in-question were purchased by Asha Devnani in the year 2009. Appellants are yet to establish their case by leading evidence before the trial Court. Admittedly, appellants are not in possession of the properties-in-question and the registered owner of the properties-in-question was Asha Devnani, who had executed a will

in favour of her husband (respondent No.1). Respondent No. 1 has executed a gift deed in favour of his daughter (respondent No. 2).

In the facts and circumstances of the present case, trial Court rightly held that the appellants had no *prima facie* case or balance of inconvenience in their favour for grant of relief of temporary injunction. Rather, in case, relief of temporary injunction is granted, respondents would suffer an irreparable loss.

No ground for interference is made out.

Dismissed.

(SABINA)J.

Sudha/58



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