

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

D.B. Special Appeal Writ No. 672/2019

Smt. Lalita Kanwar Wife Of Shri Jitendra Singh Khinchi, Aged About 33 Years, By Caste Rajput, Resident Of House No. 104, Laxman Colony, Shyam Nagar, Jaipur (Rajasthan).

----Appellant

Versus

1. Sumer Singh Khinchi Son Of Late Shri Rampal Singh Khinchi, Aged About 65 Years, By Caste Rajput, Resident Of House No. 104, Laxman Colony, Shyam Nagar, Jaipur (Rajasthan)
2. Smt. Ummed Kanwar Wife Of Shri Sumer Singh Khinchi, Aged About 56 Years, By Caste Rajput, Resident Of House No. 104, Laxman Colony, Shyam Nagar, Jaipur (Rajasthan)
3. Jitendra Singh Khinchi Son Of Shri Sumer Singh Khinchi, Aged About 35 Years, By Caste Rajput, At Present Residing At Plot No. 64-B, Ashok Nagar, Purani Chungi, Ajmer Road, Jaipur- Permanent Address- House No. 104, Laxman Colony, Shyam Nagar, Jaipur (Rajasthan)

----Respondents

For Appellant(s)	: Mr. Saransh Saini with Ms. Suman Choudhary
For Respondent(s)	: Mr. D. V. Tholia

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHA
Order**

30/04/2019

We have heard leaned counsel for both the parties.

The appeal has been filed against the order dated 16.04.2019 of the learned Single Judge by which the interim order

dated 08.01.2019 passed in favour of the petitioner wife has been vacated. The petitioner wife has challenged in the writ petition the order dated 22.11.2018 passed by the learned Sub-Divisional Officer, Jaipur (II-cum-Maintenance Tribunal under the Provisions of Maintenance & Welfare of the Parents & Senior Citizens Act, 2007 (The Tribunal). The Tribunal by the aforesaid order directed her to handover the vacant possession of the portion of the house in question to the respondents. The dispute is with regard to the portion of the house occupied by the respondents along with the appellant. The learned Single Judge by the impugned order has vacated the interim order passed in favour of the appellant and she would be liable to be evicted from the disputed property. Although the main writ petition against the order is yet to be decided by the learned Single Judge.

Having heard learned counsel for the parties and considered the nature of dispute and the arguments, we are not inclined to affirm the impugned order as it would result in dispossessing of the appellant from the portion of the house in question, pursuant to order of the Tribunal, which is under challenge in the writ petition. By the interim order, this Court rightly stayed operation of the order dated 22.11.2018 the validity of which shall be decided in the writ petition itself after hearing the arguments of both the sides. In the circumstances, we set aside the impugned order and restore the interim order passed by the learned Single Judge in favour of the appellant.

In our view, appellate court would be to decide the main writ petition itself after hearing the arguments of both the sides. In the circumstances, we set aside the impugned and restored the

impugned order passed by the learned Single Judge in favour of the applicant.

It is brought to our notice that certain dispute is pending between appellant and her husband respondent No.3 herein which has come to this Court on behalf of the appellant by way of D.B. Civil Misc. Appeal No.563/2019 and this Court by order dated 05.04.2019 referred the same to Mediation Centre attached to this Court.

We therefore make it clear that the result therein will not adversely affect the case of the appellant in the writ petition. We direct the Registry to list the writ petition itself on 20.05.2019. Considering the nature of dispute and the urgency so expressed, we request the learned Single Judge to decide the main writ petition itself on the fixed date or any other hearing date in his discretion.

(N. S. DHADDHA),J

(MOHAMMAD RAFIQ),Acting CJ

Chouhan/129

