


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 14451/2024

Govind Narayan S/o Late Jagdish Narayan, Resident Of Plot No. 4, Opp. Smriti Park, Road No. 1, Sikar Road, Jaipur, Raj.

----Plaintiff/Petitioner

Versus

- 1 Chandrashekhar Alias Satyanarayan Sharma Son Of Late Jagdish Narayan,
- 2 Om Prakash Son Of Late Jagdish Narayan,
- 3 Mrs. Shanti Devi Wife Of Late Jagdish Narayan,
- 4 Vishnu Sharma Son Of Om Prakash Sharma,
- 5 Sumit Sharma Son Of Chandrashekhar Alias Satyanarayan Sharma,
- 6 Madhusudan Sharma Son Of Govind Narayan,
Resident Plot No. 4, Opposite Smriti Park, Road No. 1,
Opposite Janglat Chowki, Mahapura Kheda, Sikar Road,
Jaipur.
- 7 Smt. Sunita Alias Pushpa Sharma Wife Of Late Jugal Kishore Sharma, Resident Of Shyam Kunj, M/P Chop, Via Maurija, Tehsil Amer, District Jaipur, Raj.

----Defendants/Respondents

For Petitioner(s) : Mr. Rajat Ranjan
For Respondent(s) : Mr. Yash Pal Garg

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Date of hearing and conclusion of arguments	27.04.2026
Date on which the judgment was reserved	27.04.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	30.04.2026

1. The present civil writ petition has been filed assailing the order dated 22.07.2024, passed by the learned Additional District and Sessions Judge No. 05, Jaipur Metropolitan-II, in Civil Misc. Appeal No. 07/2023, whereby the learned Appellate Court, while dismissing the appeal preferred by the plaintiff-petitioner, upheld the order dated 21.08.2023, passed by the learned Additional Civil Judge-cum-Metropolitan Magistrate No. 3, Jaipur Metropolitan-II, in Civil Application No. 19/2021. By the said order, the application for temporary injunction filed by the plaintiff-petitioner was partly allowed only to the limited extent that the parties were restrained from transferring or encumbering the disputed property in any manner in respect of the property described in Schedule 'A' and Schedule 'B' annexed to the application, which has fallen to the share of Jagdish Narayan.

2. The necessary facts for adjudication of the present writ petition are that the plaintiff-petitioner instituted a suit for partition, declaration, and permanent injunction in respect of two disputed properties situated at Sikar Road, bearing *Khasra* No. 78/3 admeasuring 2215.4 square yards, and another property situated opposite Jyoti Petrol Pump bearing *Khasra* No. 79/1 admeasuring 1210 square yards. Both properties are described as Schedule 'A' and Schedule 'B' in the map annexed with the plaint. The plaintiff-petitioner has averred that the said properties were jointly purchased by the ancestors of the parties, namely Jagdish Narayan and Harsahai, through a registered sale deed, and that they had raised construction thereon and remained in possession

thereof. He further stated that the properties have remained undivided on the spot.

2.1 The plaintiff-petitioner and respondent-defendant Nos. 1 & 2 are the sons of Late Jagdish Narayan; respondent-defendant No.3 is his wife; and respondent-defendant Nos. 4 to 6 are his grandsons. Jagdish Narayan died on 25.08.2020 and Harsahai died on 05.10.2020 leaving no legal heirs. Consequently, the disputed properties devolved upon the plaintiff-petitioner and respondent-defendant Nos. 1 to 3, each having an alleged 1/4th share therein. The plaintiff-petitioner is stated to be residing in the disputed property along with his family. It was also stated that the customary *pagdi* ceremony of Jagdish Narayan was performed in favour of the plaintiff-petitioner, whereas that of Harsahai was performed in favour of respondent-defendant No. 2.

2.2 The plaintiff-petitioner has further stated that after the demise of Harsahai, respondent-defendant No. 2, for the first time, produced a Will dated 31.12.2018 allegedly executed by Harsahai in his favour during the *pagdi* ceremony and furnished a copy thereof to the plaintiff-petitioner. The said Will makes reference to a prior partition between Jagdish Narayan and Harsahai, purportedly effected through a consent decree dated 28.04.2008 in Case No. 11/2008, based on an agreement dated 10.12.2007, concerning *Khasra* No. 79/1, and also alleges a similar consent partition of *Khasra* No. 78/3.

2.3 The plaintiff-petitioner has challenged the said Will as null, void, illegal, and fraudulent, contending that the alleged decree and partition were procured by Harsahai in collusion with his

advocate and by taking undue advantage of the mental incapacity of Jagdish Narayan, who, as pleaded, was suffering from mental illness since 1981–82, which led to his dismissal from service in the RJC Department, Jaipur, rendering him incapable of participating in legal proceedings. It has been specifically alleged that the decree dated 28.04.2008 was fraudulently obtained in the absence of Jagdish Narayan, wherein a suit was filed by the advocate of Harsahai on behalf of Jagdish Narayan, and without proper service, the defendant admitted the claim, resulting in a collusive decree. It was further alleged that a forged consent partition in respect of *Khasra* No. 78/3 and the Will dated 31.12.2018 were prepared on the basis of such fraudulent acts.

2.4 The plaintiff–petitioner has further averred that the disputed properties generate a monthly rental income of Rs. 1,12,300/-, out of which he claims entitlement to 1/4th share. However, when he approached the tenants to deposit rent in his favour, they refused, allegedly at the instance of respondent–defendant Nos. 1 to 3, who have also denied the plaintiff–petitioner’s right to partition as well as partition by metes and bounds.

2.5 During the proceedings, the plaintiff–petitioner filed an application under Order 39 Rules 1 and 2 CPC. In response thereto, respondent–defendant Nos. 2, 3, 4, 6 & 7 filed a common reply denying the averments and seeking rejection of the application, while respondent–defendant Nos. 1 and 5 filed a separate reply to the same effect. The plaintiff–petitioner also filed a rejoinder to the said replies.

2.6 Upon hearing the parties, the learned trial Court partly allowed the application for temporary injunction vide order dated 21.08.2023, granting relief only in respect of the properties described in Schedule 'A' and Schedule 'B' to the extent they were found to be in the share of Jagdish Narayan, while rejecting the plaintiff-petitioner's claim for injunction in respect of the entire suit properties.

2.7 Aggrieved thereby, the plaintiff-petitioner preferred Civil Miscellaneous Appeal No. 07/2023 before the District Judge, Jaipur Metropolitan-II, which came to be dismissed vide order dated 22.07.2024. It is also pertinent to note that the respondents-defendants had likewise preferred an appeal against the order dated 21.08.2023, which too was dismissed by the same learned Appellate Court's order dated 22.07.2024.

3. Hence, being aggrieved by the order dated 22.07.2024, the plaintiff-petitioner has preferred the present civil writ petition.

4. Learned counsel for the petitioner submitted that orders dated 22.07.2024 and 21.08.2023 passed by the learned Courts below to the extent of rejection of petitioner's temporary injunction application for entire suit properties, is against the law and material available on record. He further submitted that the learned trial Court during the trial Court also granted interim stay vide order dated 08.02.2021 in favour of the plaintiff-petitioner with regard to complete suit property which is mentioned as Schedule 'A' and Schedule 'B' in the plaint.

4.1 Learned counsel for the petitioner contended that the learned Appellate Court has failed to appreciate the fact that Harsahai in

collusion with his advocate and by taking the undue advantage of mental incapacity of Jagdish Narayan procured the decree dated 28.04.2008 in case No. 11/2008.

4.2 Learned counsel for the petitioner further contended that the impugned order is contrary to settled principles of law governing partition of immovable property. He submitted that the learned Appellate Court failed to appreciate that no valid partition can be effected without a registered instrument as mandated under Section 17 of the Registration Act, 1908. The alleged "consensual partition" relied upon by the defendants is unregistered and thus legally unenforceable.

4.3 Learned counsel for the petitioner contended that the property in question being undivided, the testator (Harsahai) could not have bequeathed specific demarcated portions of the property. At best, he could have bequeathed his undivided share, and not specific physical portions as depicted in the maps annexed with the alleged Will. Additionally, the Will itself shows arbitrary allocation of portions, including transfer of a part of the alleged portion of Jagdish Narayan to a third party namely; Madhusudan, which is inherently contradictory and casts serious doubt on the genuineness of the alleged partition and Will. Therefore, the conduct of the parties clearly establishes that the property has always remained joint and unpartitioned.

4.4 Learned counsel for the petitioner submitted that the decree allocates a disproportionately valuable front portion (on main Sikar Road) to the Harsahai while relegating the Jagdish Narayan to the less valuable rear portion, thereby violating principles of fair

and equitable partition. At the relevant time, Jagdish Narayan was suffering from mental illness and was incapable of understanding or consenting to legal proceedings, rendering the decree voidable on grounds of incapacity and fraud. Subsequent conduct of the parties, including filing of eviction proceedings by Harsahai in property allegedly belonging to Jagdish Narayan and continued joint possession, clearly indicates that the decree remained unimplemented.

4.5 Learned counsel for the petitioner submitted that the plaintiff's consistent case is that the entire property is joint and unpartitioned. Granting relief only with respect to a portion of the property amounts to piecemeal adjudication and virtually accepts the defendants' case at an interim stage.

4.6 In view of the foregoing, and considering that the property is under joint possession and that serious disputes subsist, it is necessary to preserve the property in its present condition in order to avoid multiplicity of litigation. Learned counsel for the petitioner, therefore, prayed that the present writ petition be allowed and that the order dated 22.07.2024 be modified to the extent of directing maintenance of status quo in respect of the entire suit property.

5. Per contra, learned counsel for the respondents submitted that the properties in question were already divided between Jagdish Narayan and Harsahai during their lifetime through proper partition and recorded in revenue records. Learned counsel for the respondents further submitted that Harsahai subsequently disposed of his share through a valid registered will dated

31.12.2018, allocating property to specific beneficiaries, leaving no scope for further partition or claim by the petitioner. He further contended that the petitioner has no legal right over Harsahai's property and cannot challenge the Will, especially since he was aware of these arrangements since 2009 and had even consented through agreements.

5.1 Learned counsel for the respondents further submitted that the remaining property of Jagdish Narayan is to be divided among his lawful heirs, including Pushpa Devi, who has been deliberately excluded from the suit. He contended that the petitioner is accused of falsely claiming rights over Harsahai's property despite prior knowledge of the partition, Will, and collaboration agreement (2010), all of which he had acknowledged. It is further alleged that the petitioner is unlawfully collecting rent from tenants without entitlement and withholding shares from other rightful parties.

5.2 Learned counsel for the respondents denied allegations of threats and asserted that the petitioner has failed to establish a *prima-facie* case, balance of convenience, or irreparable loss. He, therefore, prayed that the present writ petition may be dismissed.

6. Heard learned counsel for both the parties and perused the material available on record.

6.1 This Court finds that the controversy in the present matter fundamentally pertains to the properties described in Schedule 'A' and Schedule 'B' appended to the plaint. *Prima-facie*, both schedules form part of a composite and interrelated subject matter arising out of the same original holdings and transactions

between the predecessors, namely; Jagdish Narayan and Harsahai. Schedule 'A' relates to land bearing *Khasra* No. 78/3, whereas Schedule 'B' pertains to *Khasra* No. 79/1 (including its sub-divisions). The consistent case of the petitioner is that the said properties were jointly acquired, possessed, and continued to remain undivided, thereby giving rise to a claim of joint ownership and entitlement.

6.2 It is true that the learned trial Court, on the basis of the available revenue records and the decree dated 28.04.2008, has formed a *prima-facie* opinion that portions, particularly those reflected in Schedule 'B', stood partitioned and separately recorded, and accordingly confined the grant of interim protection to the extent of the share of Jagdish Narayan. However, inspite of finding by both the learned Courts below that the property Schedule 'A' has not been partitioned, only restrained the defendant upto the extent of share of Jagdish Narayan.

6.3 At the interlocutory stage, the learned Courts below is not expected to render any definitive findings on such disputed questions; rather, its duty is confined to preserving the subject matter of the litigation so as to ensure that the final relief, if granted, is not rendered illusory or nugatory. The material placed on record discloses that, property Schedule 'A' was not partitioned and as also found by both the learned Courts below. In such circumstances, any disturbance, alienation, or alteration in respect of any segment of the suit property Schedule 'A' is likely to prejudice the rights of one or the other party and may give rise to

third-party interests, thereby complicating the adjudicatory process and potentially leading to multiplicity of proceedings.

6.5 In the considered opinion of this Court, a *prima-facie* case is made out in favour of maintaining the status quo with respect to the property described in Schedule 'B' upto the extent of share of Jagdish Narayan and in regard to Schedule 'A' entire property; the balance of convenience also tilts in favour of preserving the existing state of affairs so as to avoid any irreversible changes; and the likelihood of irreparable injury during pendency of the suit may defeat the ends of justice. The equitable jurisdiction of this Court, therefore, warrants intervention to the extent necessary to protect the subject matter of the suit.

6.6 Accordingly, the present writ petition is hereby **partly allowed** and while not interfering with the reasoning of the learned trial Court insofar as it acknowledges the existence of a serious dispute between the parties, the operative part of the order dated 22.07.2024, passed by the learned Additional District and Sessions Judge No. 05, Jaipur Metropolitan-II, in Civil Misc. Appeal No. 07/2023, whereby the learned Appellate Court, while dismissing the appeal preferred by the plaintiff-petitioner, upheld the order dated 21.08.2023, passed by the learned Additional Civil Judge-cum-Metropolitan Magistrate No. 3, Jaipur Metropolitan-II, in Civil Application No. 19/2021, is modified in the interest of justice. It is hereby directed that both parties shall not alienate, transfer or create third party interest in the suit property described in Schedule 'B' upto the share of Jagdish Narayan and in respect to Schedule 'A' entire property, until final disposal of suit.

This direction is issued without expressing any opinion on the merits of the case, and all rights and contentions of the parties are kept open for adjudication at the trial of the suit.

6.7 Pending application(s), if any, stands disposed of.

6.8 Record of the learned Courts below be sent back forthwith.

(BIPIN GUPTA),J

Sudha/