

# RAJASTHAN HIGH COURT

Bhura

Vs.

Addl. District Judge, Jaipur

Civil Writ Petn. No. 5334 of 2003

(Shiv Kumar Sharma, J.)

15.09.2003

## JUDGEMENT

**Shiv Kumar Sharma, J.**

1. The defendant-petitioner in the instant writ petition under Article 227 of the Constitution seeks to quash the impugned order dated August 16, 2003 of the learned Additional District Judge No. 8, *Jaipur City* passed in Civil Misc. Appeal No. 3/2003 whereby temporary injunction granted in favor of the plaintiffs and the defendant petitioner was restrained from raising construction over the plot JCEF shown in the map.

2. The grievance expressed by the learned counsel on behalf of the defendant petitioner was that second application for issue of temporary injunction was barred by principles of *res judicata* and the order of learned appellate Court was palpably illegal and not based on the sound judicial principles.

3. Having scanned the material on record I find that plaintiffs sought the relief second time under the changed circumstances. It was pleaded by the plaintiffs that on February 12, 2003 the defendant and his sons threatened the plaintiff to raise construction over the plot in question.

4. In my considered opinion order of temporary injunction is capable of being altered or varied on *prima facie* proof of new situation that may have emerged subsequently. Their Lordships of the Supreme Court in *Arjun Singh v. Mohindra Kumar*,<sup>1</sup> indicated that second application for temporary injunction could be filed. It was observed as under:-

"Interlocutory orders are of various kinds; some like orders of stay, injunction or

receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the Court usually take. They did not in that sense, decide in any manner the merits of the controversy to issue in the suit and do not course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not infringe upon the legal rights of parties to the litigation the principle of *res judicata* does not apply to the findings on which these orders are based, though if applications were made, for relief on the same basis after the same has once been disposed of, the Court would be justified in rejecting the same as an abuse of the process of Court."

5. For the reasons aforementioned, I find myself unable to agree with the submissions advanced by learned counsel for the petitioner. The writ petition being devoid of merit stands dismissed.

Petition dismissed.

Cases Referred.

1. AIR 1964 SC 993