

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्स जज Revision No. 5972/2016/TA/Sawaimadhopur Raghuveer Singh Vs. Narendra Singh	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
05.9.2016	<p style="text-align: center;"><b><u>S.B.</u></b> <b>Shri Satish Chand Kaushik, Member</b></p> <p><b><u>Present:</u></b></p> <p>Shri Shailendra Rana : counsel for the petitioner. Shri Yogendra Singh : counsel for non-petitioner no.1. - - -</p> <p>This revision petition has been moved by the petitioner under section 230 read with section 221 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as "the Act") being aggrieved with the order of the learned Sub Divisional Magistrate, Bamanwas District Sawaimadhopur dated 22.7.2016.</p> <p>In this case, a revenue suit was filed before the learned Sub Divisional Magistrate, Bamanwas. Along with the suit, an application for interim injunction was also moved and after hearing plaintiff-applicant Narendra Singh ex-parte, learned S.D.M. passed the order thereby restraining the defendant-non-applicants from peaceful possession and use of the land upto 1/3rd share which is the share of the plaintiff-applicant according to plaint. The notices of the plaint and application were sent to the non-applicants Reghuveer Singh etc.; however, an order dated 22.7.2016 was again passed by the learned S.D.M., Bamanwas in favour of the plaintiff and against the defendants thereby restraining the non-applicants no.3 and 4 to maintain the status quo of the site and record till next date of hearing and the hearing was fixed for 22.9.2016. Being aggrieved with the order dated 22.7.2016, this revision has been preferred before this Board.</p> <p>After presentation of the revision, the counsel for the plaintiff-non-petitioner appeared before the Board and filed application for dismissal of the revision as not maintainable. The copy of the same was given to the petitioner and arguments were heard.</p>	

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	<p>The learned counsel for the applicant-non-petitioner argued that this revision has been preferred being aggrieved with the order of the learned S.D.M., Bamanwas dated 22.7.2016 by which order the learned S.D.M. passed an order to maintain the status quo of the site and record till next date of hearing under section 212 of the Rajasthan Tenancy Act. The learned counsel argued that in this case, the suit was filed by the plaintiffs (non-petitioners no.1 and 2 herein) and the petitioner Raghuvver Singh, non-petitioner Dashrath Singh, Jogendra Singh, Rituraj Singh and Kishan Singh were made party therein the suit and the application for injunction under section 212. The learned S.D.M. passed ex-parte order dated 06.6.2014 thereby restraining the non-applicants not to interfere in the user of the land in dispute upto the 1/3rd share of the plaintiff-applicant and the matter was fixed for 15.7.2014 and thereafter, again fixed for 02.9.2014. In the meanwhile, the plaintiff (non-petitioner) came to know that the defendant-non-applicants are trying to sell out the land in dispute and then he made an application before the Sub Registrar and Tehsildar landholder not to transfer the land and maintain the status quo as well as a second application under section 212 was also moved before the learned S.D.M. in the pending proceedings, including Sub Registrar and Tehsildar as non-applicants no.3 and 4. And after hearing the applicants, the learned S.D.M. passed an order for the maintenance of status quo on 22.7.2016 till next date i.e. 22.9.2016. It is the legal order and passed as per the law. It is the appealable order and no revision can be filed against that order. The learned counsel referred the legal pronouncements 2014(1) RRT 265, 2014 RBJ 70, 2016(1) RRT 208, 2000 AIR (SC) 3032.</p> <p>On the other hand, the learned counsel for the petitioner argued that in this case, ad interim injunction</p>	

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	<p>order was passed on 06.6.2014. However, the non-petitioners concealed the fact and filed another suit which was registered as case no. 43/2016 and in that case, this order under challenge has been passed illegally. The learned counsel argued that if any act is being done against the established principle of law, then revision is maintainable. It has been held by the Hon'ble Full Bench of this Board in the case of Jagdish Prasad Vs. Bhopal Ram &amp; ors. reported in 2014(1) RRT 409. It was argued that the impugned order dated 22.7.2016 has been passed in gross violation of the law. It is the established principle that between the same parties for the same matter in issue, the second suit is not maintainable and second suit filed shall be stayed under section 10 of the Code of Civil Procedure. But the learned lower court declined to accept the legal position and passed the illegal order dated 22.7.2016 and as such this revision petition is maintainable and the order of learned S.D.M. is likely to be rejected.</p> <p style="text-align: center;">Heard the learned counsel for the parties and gone through the matter.</p> <p>It is the established legal position that if any order has been passed or any suit has been filed, the amendment can be done in it afterwards. If after passing the ad interim order, it is found that some persons who are not party to the suit, may violate the order of the court and they must be made party to the suit and they should be restrained, then there is no bar to file the second application by mentioning the circumstance and asking for the injunction under section 212 of the Tenancy Act. The question before this Board for consideration is that whether rejecting or accepting ex-parte injunction under section 212 of the Rajasthan Tenancy Act is a revisable order? So far as this question is concerned, the Hon'ble High Court of Rajasthan</p>	

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	<p>in a case reported in 2014(1) DNJ (Raj.) page 35 Khema Ram Vs. State of Rajasthan &amp; ors. specifically held that granting or rejecting injunction is appealable and not revisable order. The scope of revision is very limited. The revision under section 230 of the Rajasthan Tenancy Act can be filed only on these grounds :</p> <p><b>"230. Power of the Board to call for cases -</b> The Board may call for the record of any case decided by any subordinate revenue court in which no appeal lies either to the Board or to a civil court under section 239 and if such court appears ;</p> <p>(a) to have exercised jurisdiction not vested in it by law; or</p> <p>(b) to have failed to exercise jurisdiction so vested; or</p> <p>(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.</p> <p>Board may pass such orders in the case as it thinks fit."</p> <p>Section 115 of the Code of Civil Procedure also provides that :</p> <p><b>"115. Revision -</b> (1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears -</p> <p>(a) to have exercised a jurisdiction not vested in it by law, or</p> <p>(b) to have failed to exercise a jurisdiction so vested, or</p> <p>(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.,</p> <p>the High Court may make such order in the case as it thinks fit."</p> <p>As such, it is very much clear from the provision itself that revision can be filed only in a matter where the order is not appealable. The Hon'ble Supreme Court of India in the matter of (2007) 3 Supreme Court Cases 175 Khajan Singh (dead) by LRs Vs. Gurbhajan Singh</p>	

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	<p>and others, has held that, "if there is no illegality or material irregularity found to have been committed by the learned lower court, no interference has to be made." In the case of (2003) 6 SCC 675 Suryadev Rai Vs. Ramchander Rai, the Hon'ble Apex Court held that as per Order 39 Rule 1 and Section 115 (1) of the CPC, if there is any interlocutory order, that order is no longer revisable under section 115 due to the substitution of the proviso. An interlocutory order does not finally dispose of the suit or other proceedings and as such revision is not maintainable. Therefore, it is very much clear that in this matter as well the order passed by the learned S.D.O. is an interlocutory order by which order, application has not been disposed of finally but only ad interim ex-parte injunction was denied and as such, no revision is maintainable against that order.</p> <p>Thus, I am of the considered opinion that granting or refusing ex-parte injunction is not a revisable order. The Parliament has made relevant amendments also in this regard in Section 115 of the Code of Civil Procedure keeping in view the mounting of frivolous litigations through revision petitions. Though no such amendment has been made in Section 230 of the Rajasthan Tenancy Act, even the rule guiding revision is applicable to the Rajasthan Tenancy Act as well. The Hon'ble High Court of Rajasthan in a case reported in 2014(1) DNJ (Raj.) page 35 Khema Ram Vs. State of Rajasthan &amp; ors. specifically held that granting or rejecting injunction is appealable and not revisable order. The Full Bench of this Board in 2014(1) RRT 409, Jagdish Prasad Vs. Bhopal Ram also endorsed the same view. It is the discretion of the learned trial court to see and pass the appropriate ad interim orders which are necessary for the administration of justice. Until and unless there is misuse of power, no interference should be made.</p>	

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	<p>As such, this revision petition is not maintainable and liable to be dismissed; hence dismissed.</p> <p>Pronounced.</p> <p>(Satish Chand Kaushik) Member</p> <p>---</p>	