

तारीख हुक्म	हुक्म या कार्यवाही इनिशियल्स जज	नम्बर व तारीख अहकाम जो इस हुक्म की तामील में जारी हुए
02-12-2011	<p style="text-align: center;"><u>S.B.</u> Shri Pramil Kumar Mathur, Member</p> <p><u>Present:</u> Shri J.P. Mathur, counsel for the petitioners. Shri Ashok Agrawal, counsel for non-petitioners No. 1 to 4.</p> <p style="text-align: center;">= = =</p> <p>In the injunction application filed by non-petitioners No.1 to 4 against the present petitioners and rest of non-petitioners under section 212 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as 'the Act') before Sub Divisional Officer, Rajgarh (Alwar), the learned trial court has issued an injunction order against the present petitioners and rest of non-petitioners on 27.6.2011. Being dissatisfied with above injunction order, an appeal was preferred before the Revenue Appellate Authority, Alwar in which a stay application was also filed and during pendency of appeal, desired stay has been granted on 21.7.2011 till the pendency of the appeal. Aggrieved by that order dated 21.7.2011, present petitioners have approached before this court.</p> <p style="text-align: center;">Heard rival contentions of both the parties at admission stage.</p> <p>Learned counsel for the petitioners has submitted that in the impugned order learned appellate court has passed unnecessary observations which are suffice to decide the appeal at preliminary stage. Perusal of impugned order reveals that complete relief as prayed in appeal has been granted on the stay application and nothing remains to be decided in the appeal. He further submitted that petitioners are the recorded khatedars of the</p>	

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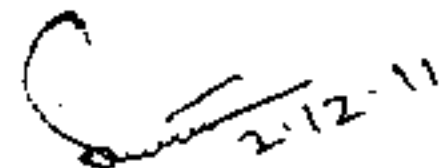
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	<p>disputed land and as per the settled principles, injunction cannot be issued against the recorded khatedar; therefore, the impugned order is unsustainable in the eye of law and is liable to be set aside. He has placed reliance on the following judgments :-</p> <ol style="list-style-type: none">1. "Kan Singh Vs. Malam Singh" RRD 1985 page 2092. "Doongar Ram Vs. Mst. Dhapi" RRD 1982 page 7203. "Rama Vs. Roshan Singh" RRD 1974 page 2284. "Sammi Khan Vs. Mohan Singh" RRD 1978 page 3775. "Smt. Prakash Kanwar & anr. Vs. Kailash Chand & ors." RRD 2002 page 84 <p>On the contrary, learned counsel for the non-petitioners has submitted that petitioners have challenged the order which is passed in between the proceedings. Main appeal against the order passed under section 212 of 'the Act' by trial court is still pending and it has to be decided on merits. So the impugned order does not fall within the ambit of the 'case decided' as mentioned in section 230 of 'the Act'. Therefore, revision against the impugned order is not maintainable; hence revision is liable to be dismissed.</p> <p>Before appreciating with the main contentions advanced by the learned counsels, it is pertinent to reproduce the impugned order as passed on 21.7.2011 which is as under :-</p> <p>“अतः उपरोक्त विवेचन के आधार पर स्थगन प्रार्थना पत्र स्वीकार किया जाता है कि वादीगण / अपीलान्तान की</p>	


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	<p>आराजी खसरा नम्बर-353 रकबा 0.08, 374 रकबा 0.41, 375 रकबा 0.70, 376 रकबा 0.01, 377 रकबा 0.41, 378 रकबा 0.19, 379 रकबा 0.17, 380 रकबा 0.57, 388 रकबा 0.22, 418 रकबा 0.55, 412 रकबा 0.31, 445 रकबा 0.45, 446 रकबा 0.43 वाके ग्राम नयागांव बोलका तहसील राजगढ़ के 4/8 हिस्से पर ताफैसला प्रति०/रेस्प० को पाबन्द किया जाता है कि उनके कब्जे काशत में किसी प्रकार की रुकावट, मजाहमत पैदा ना करें । आदेश सुना गया । पत्रावली वास्ते तलबी शेष रेस्प० दिनांक 17-8-2011 को पेश हो ।”</p> <p>This is admitted position that impugned order has been passed on the stay application filed in pending appeal under section 225 of 'the Act' preferred against injunction application decided by the learned trial court u/s 212 of 'the Act'. Since the main appeal expecting disposal on merits, against the injunction order passed by the learned trial court dated 27.6.2011 is pending before the learned appellate court, thereby the trial court's order is still the subject matter of the appeal which was not decided by the learned Revenue Appellate Authority when rights & obligations of the parties are yet open for consideration before the learned Revenue Appellate Authority, then any observation affecting the rights & obligations of the parties while deciding the stay application filed in the appeal cannot amount to deciding the subject matter of the appeal. Therefore, I am still of the firm view that the impugned order passed by the learned appellate court on stay application does not fall within the ambit of 'case decided' as enshrined u/s 230 of 'the Act' and ordinarily revision is entirely barred against such order.</p>	


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	<p>In the case of "Kan Singh Vs. Malam Singh" reported in RRD 1985 page 209, Hon'ble co-ordinate bench of this court delivered the judgment on the basis of the case reported in RRD 1982 page 720. But the case cited in RRD 1982 page 720 itself enunciated this principle :</p> <p>"that the orders passed by the courts on stay applications do not amount to case decided and ordinarily revision is barred against such orders."</p> <p>Thus in view of what has been discussed above, the other judgments relied upon by the learned counsel do not support the claim of the petitioners. Hence, this revision petition is liable to be dismissed as non-maintainable; therefore, dismissed accordingly at admission stage.</p> <p>Pronounced.</p> <p style="text-align: center;"> (PRAMIL KUMAR MATHUR) MEMBER</p>	