

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

S.B. Civil Second Appeal No. 789/2017

Shankarlal S/o Shri Radhakishan B/c Saraf, R/o Bada Bazar,
Town Fatehpur, Distt. Sikar (Raj.)

----Appellant-Defendant

Versus

1. Sushil Kumar (Since Deceased) Through His Legal Heirs:-
 - 1/1. Sumitra Devi W/o Late Shri Sushil Kumar
 - 1/2. Sameer Poddar S/o Late Shri Sushil Kumar
2. Jagdish S/o Late Shri Madan Lal B/c Mahajan Poddar, R/o Town Fatehpur, Distt. Sikar (Raj.)
3. Banwarilal S/o Late Shri Madan Lal B/c Mahajan Poddar, R/o Town Fatehpur, Distt. Sikar (Raj.)
4. Arun Kumar S/o Late Shri Madan Lal B/c Mahajan Poddar, R/o Town Fatehpur, Distt. Sikar (Raj.)
5. Lalit Kumar S/o Late Sanwal Ram Poddar B/c Mahajan Poddar, R/o Fatehpur At Present 1/9, Brijdham Housing Complex, 255, Canal Street, Vip Road, Ps Lake Town Kolkatta 700048 And B/503, Himachal Sv Road Sundar Nagar, Malad West Mumbai 400064
6. Shankar Lal S/o Late Sanwal Ram Poddar B/c Mahajan Poddar, R/o Fatehpur At Present 1/9, Brijdham Housing Complex, 255, Canal Street, Vip Road, Ps Lake Town Kolkatta 700048 And B/503, Himachal Sv Road Sundar Nagar, Malad West Mumbai 400064
7. Vijay Kumar S/o Late Shri Sanwal Ramji B/c Mahajan Poddar, R/o Fatehpur, At Present 4/13, Sundar Nagar, Sv Road, Malad West Mumbai 400064

----Respondents

For Appellant(s)	:	Mr. R K Agarwal, Senior Counsel assisted by Mr. Mamoon Khalid
For Respondents No.1 to 4	:	Mr. Mahendra Goyal
For Respondents No.5 to 7	:	Mr. Bipin Gupta

HON'BLE MR. JUSTICE PRAKASH GUPTA**Judgment****30/04/2018**

The instant Civil Second Appeal under Section 100 CPC has been filed by the defendant-appellant aggrieved by the judgment and decree dated 26th September, 2017 passed by the learned Additional District & Sessions Judge, Fatehpur Shekhawati, District Sikar whereby the learned court below dismissed the appeal filed by the defendant-appellant against the judgment and decree dated 22nd July, 2010 passed by the Senior Civil Judge, Fatehpur, District Sikar in Civil Suit No.12/2003.

Learned senior counsel for the appellant Shri R K Agarwal after arguing the matter at some length, on instruction of his client, has not pressed this appeal on merits. The only prayer made by him is that time of three years may kindly be granted to the appellant to vacate the tenanted premises.

Learned counsel appearing for the respondent Shri Mahendra Goyal on instructions of his clients has no objection in granting the time as prayed for by the appellant for vacating the tenanted premises.

In view of the aforesaid submission of learned counsel for the parties, this second appeal is being decided in the following terms:-

1. The defendant-appellant shall be entitled to continue in possession of the suit premises uptill 30th April, 2021 but not beyond that, subject to condition that he would hand over the vacant and peaceful possession of the tenanted premises to the respondents on or before 30th April, 2021.

2. The appellant shall deposit arrears of mesne profit, if any, due towards them up to 30th April, 2018 at the rate of Rs.50/- per month within a period of one month from today with the bank account of the respondents and thereafter, from the month of May, 2018, the appellant shall continue to deposit the mesne profit at the rate of Rs.1,000/- in the bank account of the respondents by 15th of each month.
3. The appellant shall not alienate or otherwise create third party right or hand over possession of the tenanted premises in question to any other person.
4. If the appellant fails to deposit the mesne profit consecutively for four months, the respondents shall be at liberty to execute the decree without any further reference to the Court.

Further, the appellant shall submit an undertaking on oath incorporating the aforesaid conditions before the Senior Civil Judge, Fatehpur, District Sikar within a period of four weeks from the date of this order. In case, the appellant fails to submit the undertaking as aforesaid within four weeks from today and/or commits breach of any of the conditions of this order, the respondents shall be entitled to execute the decree forthwith and obtain possession of the suit premises in accordance with law.

The second appeal stands disposed of accordingly, stay application is also disposed of.

(PRAKASH GUPTA),J