

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

S.B. Civil Second Appeal No. 224/2016

1. Foran Singh S/o Bhoop Singh, R/o Village Uwar Teh. Kumher, Distt. Bharatpur Since Deceased Through His Legal Representative

1/1. Than Singh S/o Late Foran Singh, R/o Village Uwar, Tehsil & District Bharatpur

----Appellant

Versus

1. Mohan Singh S/o Bhoop Singh R/o Village Uwar Teh. Kumher, Distt. Bharatpur
2. Kunwar Pal S/o Maharaj Singh, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
3. Mukhtyar S/o Bhajan Lal, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
4. Narendra Singh S/o Bhajan Lal, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
5. Yaduveer Singh S/o Hukam Singh, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
6. Daryav Singh Deceased, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
- 6/1. Rajan Singh S/o Late Daryav Singh, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
- 6/2. Jagveer S/o Late Daryav Singh, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
- 6/3. Pista D/o Late Daryav Singh W/o Member, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
- 6/4. Bitthan D/o Late Daryav Singh W/o Gangaram, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
7. Devi S/o Tunda , R/o Village Uwar Teh. Kumher, Distt. Bharatpur
8. Vijay Singh S/o Kashi, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
9. Chandra Pal S/o Mukhtyar Singh, R/o Village Uwar Teh. Kumher, Distt. Bharatpur
10. Tehsildar, Kumher Through Tehsildar Kumber, Distt. Bharatpur
11. Premwati W/o Late Foran Singh, Village Uwar Teh. Kumher, Distt. Bharatpur
12. Jagdish S/o Late Foran Singh, Village Uwar Teh. Kumher, Distt. Bharatpur
13. Lekhraj S/o Late Foran Singh, Village Uwar Teh. Kumher, Distt. Bharatpur

14. Harish Chand S/o Late Foran Singh, Village Uwar Teh. Kumher, Distt. Bharatpur
15. Krishan Murari S/o Late Foran Singh, Village Uwar Teh. Kumher, Distt. Bharatpur

-----Respondents

For Appellant(s) : Mr. J.K. Moolchandani
For Respondent(s) :

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

30/09/2022

1. Appellant-plaintiff has preferred this second appeal under Section 100 CPC, assailing the judgment and decree dated 4.11.2015 passed in Civil First Appeal No.2/2012 by the Court of Additional District Judge No.1, Bharatpur, affirming the judgment and decree dated 13.12.2011 passed in Civil Suit No.26/2011 (14/2007) by the Court of Civil Judge (Senior Division), Kumher, District Bharatpur whereby and whereunder the civil suit for permanent injunction filed by appellant-plaintiff has been dismissed on merits.
2. Heard counsel for appellant and perused the impugned judgment and record.
3. It appears that plaintiff instituted civil suit for permanent injunction in respect of plot in question, situated at Village Uwar, District Bharatpur alleging inter alia that his ownership and established possession thereupon. Plaintiff prayed for a decree of permanent injunction against respondents-defendants not to create hindrance/ construction in use and occupation of the plot in question.

4. Respondents-defendants No.1 and 2 submitted written statement favouring to the plaintiff and did not contest the suit.

5. Respondents-defendants No.4 to 9 contested the suit and submitted written statement contending that the plot in question is part of land of Khasra No.2070 which is recorded in the joint name of defendants and they have their respective share therein.

6. The ownership and possession of plaintiff was categorically denied and contended that plaintiff, in the guise of filing the present suit wants to enter into possession over the plot in question which belongs to defendants. Learned trial Court after framing issues and recording evidence of both parties as concluded that plaintiff neither could prove his ownership nor possession over the plot in question whereas defendants have proved that the plot in question, measuring 20 Acre as part of agricultural land of Khasra No.2070 which is recorded in the name of defendants. The trial Court placed reliance on the report of Tehsildar (Ex.A1), wherein demarcation in respect of plot in question was made and which was found within periphery of the land of Khasra No.2070 and as per revenue record (Ex.A2), the land of Khasra No.2070 was recorded in the joint name of defendants. The trial Court also noticed that plaintiffs have admitted in his cross-examination, the demarcation report of Tehsildar (ExA1). In absence of any cogent and convincing evidence of plaintiffs to show his old possession and ownership over suit plot, his civil suit for permanent injunction was dismissed on merits vide judgment dated 13.12.2011.

7. Appellants-plaintiffs preferred first appeal against judgment and decree dated 13.12.2011. The first Appellate Court re-

considered and re-heard the entire pleadings and evidence of parties. The first Appellate Court also propounded over the admission of plaintiff (Pw.1) about demarcation report of the Tehsildar dated 5.2.2007 as also relied upon the revenue record of Jamabandi in favour of defendants. The first Appellate court also observed that there is no evidence on record to prove that plaintiff is in possession of the suit plot or having any ownership, nexus or concerned with the same. Accordingly, the first appeal was dismissed vide judgment dated 4.11.2015, affirming the judgment of the trial Court.

8. Having considered counsel for appellant and perused impugned judgments, this Court finds that both Courts have concurrently held that plaintiff remained miserably fail to prove his possession and ownership over the plot in question and accordingly his suit for permanent injunction has been dismissed on merits. Findings of fact are based on appreciation and re-appreciation of evidence and do not suffer from any perversity nor from misreading/ non-reading of evidence nor based on any inadmissible piece of evidence.

9. The Hon'ble Supreme Court in case of **C. Doddanarayana Reddy Vs. C. Jayarama Reddy [(2020) 4 SCC 659]** has held as under:

"29.The learned High Court has not satisfied the tests laid down in the aforesaid judgements. Both the courts, the trial court and the learned First Appellate Court, have examined the school leaving certificate and returned a finding that the date of birth does not stand proved from such certificate. May be the High Court could have taken a different view acting as a trial court but once, two courts have returned a finding which is not based upon any misreading of material documents, nor is recorded against any provision of law, and neither can it be

said that any judge acting judicially and reasonably could not have reached such a finding, then, the High Court cannot be said to have erred. Resultantly, no substantial question of law arose for consideration before the High Court.

30. Thus, we find that the High Court erred in law in interfering with the finding of fact recorded by the trial court as affirmed by the first appellate court. The findings of fact cannot be interfered with in a second appeal unless, the findings are perverse. The High Court could not have interfered with the findings of the fact."

10. In **Navaneethammal Vs. Arjuna Chetti [(1996) 6 SCC 166]**, the Hon'ble Supreme Court held as under:

"Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case the High Court is not expected to reappraise the evidence just to replace the findings of the lower courts....Even assuming that another view is possible on a reappraisal of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."

11. In **State of Rajasthan Vs. Shiv Dayal [(2019) 8 SCC 637]**, the Hon'ble Supreme Court held that a concurrent finding of the facts is binding, unless it is pointed out that it was recorded dehors the pleadings or it was based on no evidence or based on misreading of the material on record and documents, as has been held in para 16 thus:

"16. When any concurrent findings of fact is assailed in second appeal, appellant is entitled to point out that it is bad in law because it was recorded dehors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no judge acting judicially could reasonably have reached."

12. After the discussion made hereinabove, the present second appeal does not give rise to any substantial question of law and the same is bereft of merits, hence as a result the same is hereby dismissed.

13. All other pending application(s), if any, also stands disposed of.

(SUDESH BANSAL),J

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RAJASTHAN HIGH COURT



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