

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Second Appeal No. 175/2023

1. Uttamchand S/o Jethmal, Aged About 74 Years, Resident Of Mawa Patti, At Present Baginada, Bikaner. (Defendant No. 1)
2. Anju Devi W/o Uttamchand, Aged About 66 Years, Resident Of Mawa Patti, At Present Baginada, Bikaner. (Defendant No. 2)

----Appellants

Versus

1. Jethi Devi D/o Damodar Das, Resident Of Near Baginada Mohalla, Bikaner. (Plaintiff)
2. Nagar Parishad, Bikaner (Nagar Nigam, Bikaner). (Defendant)

----Respondents

For Appellant(s)	:	Mr. Virendra Acharya with Ms. Gaurangi Acharya
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HON'BLE MS. JUSTICE REKHA BORANA

Order

24/02/2026

1. The present second appeal has been filed aggrieved of judgment & decree dated 27.04.2023 passed by Additional District Judge No.6, Bikaner in Civil Appeal No.23/2020 (CIS No.26/2020) whereby judgment & decree dated 06.01.2020 passed by Additional Civil Judge No.1, Bikaner in Civil Original Suit No.419/2015 (C.O. No.2262/2014), stood affirmed.
2. Vide judgment & decree dated 06.01.2020, the learned Trial Court proceeded on to dismiss the suit for permanent injunction as filed by the plaintiff. While dismissing the suit, the Trial Court

also proceeded on to dismiss the counter claim as filed by defendant Nos.1 and 2.

3. The present second appeal has been filed on behalf of defendant Nos.1 and 2 aggrieved of the rejection of their counter claim.

4. It is an admitted fact that the suit was proceeded *ex-parte* against defendant Nos.1 and 2 and their evidence was closed way back in the year 2018. The Court therefore observed it to be a no evidence case so far as the defendants are concerned and hence rejected the counter claim filed on their behalf.

5. Counsel for the appellants submits that in the present suit, at the first instance, plaintiff's evidence was closed and subsequently even the defendants' evidence was closed.

6. Subsequent to the above, the evidence of the plaintiffs was opened on their request but that of the defendants was not opened. Counsel submits that therefore the *ex-parte* proceedings against the defendants were *prima-facie* illegal. When the plaintiff's evidence was reopened, the defendants also ought to have been granted one opportunity.

7. Heard the counsel. Perused the record.

8. The fact that after reopening of plaintiff's evidence, no application, whatsoever, was filed on behalf of the defendants for reopening of their evidence, is admitted. It is evident that till the Trial Court decided the suit, no such application was filed. Furthermore, the said ground was not even raised in the first appeal as filed by the defendants.

9. In that view of the matter, the ground as raised by counsel for the appellants at this stage, cannot be entertained.

10. No substantial question of law arises in the present appeal and the same is hence, **dismissed**.

11. Stay petition and pending applications, if any, stand **disposed of**.

(REKHA BORANA),J

145-Arvind/-