

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

S.B. Civil Second Appeal No. 170/2024

1. Harbansram S/o Chunniram, Aged About 54 Years, R/o Binjaayala, Tehsil Padampur Dist. Sriganganagar
 2. Rakesh S/o Harbansram, Aged About 25 Years, R/o Binjaayala, Tehsil Padampur Dist. Sriganganagar
 3. Rajender Singh S/o Harbansram, Aged About 23 Years, R/o Binjaayala, Tehsil Padampur Dist. Sriganganagar
- Appellants

Versus

Mohanlal S/o Tajuram, Aged About 58 Years, R/o Binjaayala, Tehsil Padampur Dist. Sriganganagar

----Respondent

For Appellant(s)	:	Mr. Pankaj Kumar Gupta
For Respondent(s)	:	Mr. Hemant Kumar Jain with Mr. Gaurav Nagda

HON'BLE MS. JUSTICE REKHA BORANA

Order

24/03/2026

1. The present second appeal has been filed aggrieved of judgment & decree dated 08.07.2024 passed by Additional District Judge, Srikanpur, District Sriganganagar in Civil Appeal No.06/2019 (CIS No.07/2019) whereby judgment & decree dated 22.02.2019 passed by Senior Civil Judge, Padampur, District Sriganganagar in Civil Original Suit No.48/2015, stood affirmed.
2. Vide judgment & decree dated 22.02.2019, the learned Trial Court proceeded on to partially decree the suit for declaratory injunction as filed by the plaintiff. The Court although declined to decree the suit for declaration but decreed the same for the relief of injunction and directed the defendants to remove their encroachment, if any, on the land in question and further, not to interfere with the same.

3. Counsel for the appellant submitted that once the learned Courts declined the relief for declaration, no relief for injunction could also have been granted as the suit then turned to be a simplicitor suit for injunction and was not even maintainable.

4. Counsel further submitted that the plaintiff neither proved any *patta* issued in favour of Gheruram nor the alleged will executed in his favour by Gheruram. Without the will being proved, the plaintiff could not have claimed any entitlement qua the property in question.

5. Per contra Counsel for the respondents submitted that allotment of the land in favour of Gheruram was specifically admitted by defendant No.1 Harbanshram in his cross-examination and once being admitted, the appellant could not lay challenge to the sanctity of the said *patta*.

6. So far as the will is concerned, the same was a registered document of the year 1982 and the inference drawn by the Court qua a document being 30 years old, was rightly drawn.

7. Counsel further submitted that even otherwise, both the Courts declined the relief of declaration in favour of the plaintiff and this Court therefore is not even required to go into the said issue.

8. After hearing the counsels and perusing the record, this Court is in concurrence with the findings as recorded by both the Trial Court and the first Appellate Court.

9. It is evident that the learned Trial Court declined any relief of declaration in favour of the plaintiff. No appeal against the same has been preferred by the plaintiff. Therefore, this Court is required to consider only one aspect -

Whether the relief of injunction granted in favour of the plaintiff was rightly granted ?

10. It is evident on record that defendant No.1 Harbanshram (DW1) specifically admitted in his cross-examination that the land in question was earlier allotted to Gheruram. He deposed as under :

“ये सही है कि वादग्रस्त जगह जिसके पट्टे हम लाये हैं पूर्व में घेरुराम को आवंटित हुई थी। ये मुझे ध्यान नहीं कि पंचायत रिकार्ड में ये भूखण्ड की जगह आज भी घेरुराम के नाम चली आ रही हो।”

11. In view of the above specific admission of the defendant himself that the land in question was allotted to Gheruram, the learned Courts rightly held the same to be of the ownership of Gheruram. The said fact was substantiated by the registered sale/ gift deed qua a part of the land executed by Gheruram in favour of a Temple.

12. So far as the Will in question is concerned, the only ground raised by the defendants was that Gheruram was not even entitled to execute any Will. Once it is held that Gheruram was the rightful owner of the property in question, he definitely was entitled to execute a Will qua the same.

13. So far as the validity of the Will is concerned, the same was not even laid a challenge to, by the defendants. No ground to the said effect has been raised in the present second appeal too. Further, no reason has been assigned as to why the registered Will of year 1982 was not to be relied upon, and that too, when there was no evidence to the contrary.

14. So far as the alleged *pattas* issued in favour of the defendants are concerned, both the Courts recorded concurrent finding of the same to be forged/fraudulent. No challenge to the said finding of both the Courts having been laid in the present second appeal, this Court is not even required to ponder over the same.

15. In view of the concurrent findings as recorded by both the Trial Court and the first Appellate Court, this Court does not find any ground to interfere with the impugned judgments/decrees.

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

17. Let the decree be drawn accordingly.

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

(REKHA BORANA),J