

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



S.B. Civil Writ Petition No. 21058/2024

Narayan S/o Adopted S/o Late Sadasukh S/o Amolakram, Aged
About 62 Years, Naalbadi, Tehsil And District Bikaner (Raj.).

-----Petitioner

Versus

1. Smt. Dhudi Devi D/o Akharam And Smt. Teeja Devi, Jaalwali (Pugal), District Bikaner (Raj.).
2. Shrawan Ram S/o Dhokal Ram, Naalbadi, Tehsil And District Bikaner (Raj.).
3. Amrata Ram S/o Heera Ram, Naalbadi, Tehsil And District Bikaner (Raj.).
4. Amara Ram S/o Heera Ram, Naalbadi, Tehsil And District Bikaner (Raj.).
5. State Of Rajasthan, Through Tehsildar (Revenue), Bikaner (Raj.).
6. Sub-Registrar, Bikaner (Raj.).
7. Lrs Late Magha Ram, S/o Akharam And Smt. Teeja Devi Through-
8. Sajna W/o Late Magha Ram, Jalasar, Tehsil And District Bikaner (Raj.).
9. Kishna Ram S/o Late Magha Ram, Jalasar, Tehsil And District Bikaner (Raj.).
10. Arjun Ram S/o Late Magha Ram, Jalasar, Tehsil And District Bikaner (Raj.).
11. Poora Ram S/o Late Magha Ram, Jalasar, Tehsil And District Bikaner (Raj.).
12. Laxman Ram S/o Late Magha Ram, Jalasar, Tehsil And District Bikaner (Raj.).
13. Pappi Devi D/o Late Magha Ram, Jalasar, Tehsil And District Bikaner (Raj.).
14. Lrs Of Sajna, D/o Akha Ram And Smt. Teeja Devi, Through-
15. Gorkha Ram, Gram Jaalwali (Pugal), District Bikaner (Raj.).
16. Mota Ram S/o Gorkha Ram, Gram Jaalwali (Pugal),

District Bikaner (Raj.).

17. Pema Ram S/o Gorkha Ram, Gram Jaalwali (Pugal), District Bikaner (Raj.).
18. Girdhari Ram S/o Gorkha Ram, Gram Jaalwali (Pugal), District Bikaner (Raj.).
19. Dhapu D/o Gorkha Ram, Gram Jaalwali (Pugal), District Bikaner (Raj.).
20. Pappu D/o Gorkha Ram, Gram Jaalwali (Pugal), District Bikaner (Raj.).
21. Samu D/o Gorkha Ram, Gram Jaalwali (Pugal), District Bikaner (Raj.).
22. Gwarja D/o Gorkha Ram, Gram Jaalwali (Pugal), District Bikaner (Raj.).
23. Umu D/o Gorkha Ram, Gram Jaalwali (Pugal), District Bikaner (Raj.).

----Respondents

For Petitioner(s)	:	Mr. Muktesh Maheshwari Mr. Nishank Madhan
For Respondent(s)	:	Mr. J.L. Purohit, Sr. Adv. With Mr. D.S. Gharsana

HON'BLE MR. JUSTICE SANJEET PUROHIT

Judgment

25/02/2026

1. Present writ petition has been filed challenging order dated 03.12.2024 passed by learned Sub-Divisional Magistrate, Bikaner, in **Case No. 98/2021** titled **Narayan Vs. Smt. Dhudi & Ors.**, whereby learned SDM, although dismissing application filed on behalf of respondent-defendant under Order VII Rule 11 CPC, proceeded to reject the suit in exercise of powers under Section 151 CPC, holding that the suit was not within its jurisdiction.

2. This Court, vide order dated 17.01.2025, while issuing notice, has ordered that petitioner shall not be dispossessed from the land in question.
3. Learned counsel for the respondents has raised preliminary objection regarding maintainability of present writ petition on the ground that petitioner has an alternative statutory remedy of filing an appeal against the impugned order under the relevant provisions of Revenue Laws.
4. Learned counsel for the petitioner submits that since the suit has been rejected but no decree has been formally drawn, appeal against said order is not maintainable under Sections 223 and 225 of the Rajasthan Tenancy Act.
5. Per contra learned counsel for the respondents has placed reliance upon definition of decree as provided under Section 2(2) of CPC, which reads as under:-

Section 2. Definitions

In this Act, unless there is anything repugnant in the subject or context,

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

6. A bare perusal of above-quoted provision makes it clear that the rejection of plaint is deemed to be a decree. Therefore, an appeal against such an order is very much maintainable.

7. Learned counsel for the respondent has also relied upon Order XLI Rule 1 CPC and the provisions of Sections 208 and 230 of the Rajasthan Tenancy Act, which are quoted below:-

ORDER XLI

APPEALS FROM ORIGINAL DECREES

1. Form of appeal What to accompany memorandum.—

(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the [Judgment].

[Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.]

(2) Contents of memorandum.—The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

[(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.]

208. Application of Civil Procedure Code — The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908), except:

(a) provisions inconsistent with anything in this Act, so far as the inconsistency extends.

(b) provisions applicable only to special suits or proceedings outside the scope of this Act, and

(c) provisions contained in List I of the Fourth Schedule, shall apply to all suit and proceedings under this Act,

subject to the modifications contained in List II of the Fourth Schedule.

230. Power of the Board to call for cases — *The Board may call for the record of any case decided by any subordinate revenue court in which no appeal lies either to the Board or to a civil court under section 239 and if such court appears —*

(a) to have exercised jurisdiction not vested in it by law; or

(b) to have failed to exercise jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

Board may pass such orders in the case as thinks fit.

8. Learned counsel for the respondents submits that in view of Section 208 of Rajasthan Tenancy Act, provisions of CPC apply to suits and proceedings under the Act to the extent not inconsistent therewith. Consequently, appeal against impugned order rejecting petitioner's suit is maintainable.

9. Learned counsel for the petitioner was unable to controvert the aforesaid legal submissions so advanced on behalf of respondents and, therefore, seeks liberty to approach the appropriate appellate forum for challenging impugned order.

10. In view of the above, present writ petition is dismissed, with liberty to the petitioner to challenge impugned order dated 03.12.2024 before appropriate appellate forum. In the event that an appeal is filed along with a stay application, appellate authority shall decide the stay application expeditiously, strictly in accordance with law.

11. Interim order passed by this Court on 17.01.2025 shall remain operative only for a period of 60 days from the date of passing of this order. It is made clear that appellate authority shall decide the stay application independently and strictly in



accordance with law, without being influenced by interim protection granted by this Court.

(SANJEET PUROHIT),J

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