



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

S.B. Civil Second Appeal No. 133/2025
CNR: RJHC020122302025 | URN: CSA / 222U / 2025

- Bhanwar Singh S/o Shri Shobha Singh Rawat, R/o Village Ladpura District Ajmer (Deceased Through Legal Heirs)
- 1 Sohan Singh Son Of Late Shri Bhanwar Singh, Aged 72 Years, R/o Ladpura, Ajmer
 - 2 Mohan Singh S/o Late Shri Bhanwar Singh, Aged About 68 Years, R/o Ladpura, Ajmer
 - 3 Madan Singh S/o Late Shri Bhanwar Singh, Aged About 66 Years, R/o Ladpura, Ajmer
 - 4 Sharwan Singh S/o Late Shri Bhanwar Singh, Aged About 64 Years, R/o Ladpura, Ajmer
 - 5 Smt. Radha W/o Shri Gopi Singh D/o Late Shri Bhanwar Singh, Aged About 70 Years, R/o Village Kesarpura, Ajmer
 - 6 Smt. Heera Devi W/o Late Shri Yashpal, R/o Village Ladpura, Ajmer
 - 7 Satpal S/o Late Shri Yashpal, Aged About 29 Years, R/o Village Ladpura, Ajmer
 - 8 Smt. Bhanwari Devi W/o Late Shri Guman Singh, Aged About 50 Years, R/o Village Ladpura, Ajmer
 - 9 Surendra S/o Late Shri Guman Singh, Aged About 33 Years, R/o Village Ladpura, Ajmer
 - 10 Jitendra S/o Late Shri Guman Singh, Aged About 29 Years, R/o Village Ladpura, Ajmer

----Appellants

Versus

- 1 Smt. Jhamku W/o Late Shri Teja, Aged About 75 Years, R/o Village Bhudol, District Ajmer
- 2 Prema Son Of Late Shri Teja, Aged About 52 Years, R/o Village Bhudol, District Ajmer
- 3 Sharwan S/o Late Shri Teja, Aged About 45 Years, R/o Village Bhudol, District Ajmer
- 4 Pappu S/o Late Shri Teja, Aged About 36 Years, R/o Village Bhudol, District Ajmer
- 5 Smt. Koya D/o Late Shri Teja W/o Shri Gangaram @ Pappu, Aged About 55 Years, R/o Village Muhami, District Ajmer
- 6 Smt. Sugna D/o Late Shri Teja W/o Shri Mahendra Singh, Aged About 50 Years, R/o Village Bubani, District Ajmer
- 7 Smt. Jamna D/o Late Shri Teja W/o Shri Kalu Singh, Aged About 46 Years, R/o Village Danta, District Ajmer
- 8 Smt. Manju D/o Late Shri Teja W/o Shri Sukha Singh, Aged About 44 Years, R/o Village Govilyat, Tehsil Pushkar, District Ajmer
- 9 Smt. Beeri D/o Late Shri Teja W/o Shri Gyan Singh, Aged About 42 Years, R/o Village Nedliyat Tehsil Pushkar District Ajmer
- 10 Smt. Sita D/o Late Shri Teja W/o Shri Jai Singh, Aged About 28 Years, R/o Village Modiyawas District Ajmer

----Respondents

For Appellant(s) : Mr. Ashish Kishore Saksena (through VC)

For Respondent(s) :

HON'BLE MR. JUSTICE MANEESH SHARMA
Order



14/08/2026

1. The present civil second appeal has been filed by the plaintiffs/appellants assailing the judgment and decree dated 11.11.2024 passed by the learned Additional District Judge No. 4, Ajmer, in Civil Appeal No. 660/2014 (142/2010) (CIS No. 660/2014), titled as '*Bhanwar Singh (deceased through legal heirs) v. Smt. Jhamku & Ors.*', whereby the learned First Appellate Court dismissed the appeal and affirmed the judgment and decree dated 10.08.2010 passed by the learned Civil Judge (Junior Division), Ajmer, in Civil Suit No. 31/2006 titled as '*Bhanwar Singh v. Teja*', wherein the suit filed by the appellants for permanent and mandatory injunction was dismissed.

2. The facts germane to the present appeal, in brief, are that the plaintiffs/appellants filed a suit for permanent and mandatory injunction. It was averred in the plaint that the suit property, being an enclosure (Bada) admeasuring 20 x 7 yards and bounded on its southern side by a pathway leading to *Ladpura Road*, was purchased by the plaintiffs/appellants' predecessor-in-title vide a registered sale deed dated 16.03.1964 from one *Hamera*.

2.1. It was further averred that the defendant, in gross defiance of a previous decree dated 04.02.2004 passed in Civil Suit No.60/1999, raised an illegal construction on a 15-foot strip of land on the southern side of the subject property, thereby dispossessing the plaintiff/appellant, for which an execution petition is presently pending. It was further pleaded that the plaintiff/appellant, since the time of his father (*Shobha Singh*) and from the date of its purchase, had been continuously and



uninterruptedly using the southern pathway connecting his enclosure (*Bada*) to *Ladpura Road* for ingress and egress.

2.2. It was then contended that on 20.02.2006, the defendant, with the ulterior motive of encroaching upon the pathway and blocking the plaintiff/appellant's access, illegally erected a 3-foot-high boundary wall extending 7 yards from East to West, thereby completely obstructing the plaintiff/appellant's right of way. Contending that the cause of action arose when the defendant commenced the said obstruction, the plaintiff/appellant prayed for a decree of permanent injunction to restrain the defendant, his family members, and agents from raising any construction on or creating any hindrance over the southern pathway leading to *Ladpura Road*. Furthermore, a decree of mandatory injunction was sought, directing the defendant to demolish the offending boundary wall at his own expense.

3. Per contra, the defendant filed a written statement contending that while the purchase of the property by *Shobha Singh* on 16.03.1964 is admitted, the plaintiff/appellant's description of the suit property is factually incorrect. It was averred that the entire enclosure (*Bada*), measuring 20 x 7 yards, faces North and is situated in front of the pukka stone-slab room, meaning the plaintiff/appellant holds no land on the southern side. The land immediately to the South belongs to one *Bhagchand*, and the defendant's land, which is enclosed by a boundary wall, is situated further South of *Bhagchand's* property. The defendant categorically denied encroaching upon any 15-foot strip of land or obstructing any pathway, asserting that the plaintiff/appellant's



property never had direct access to *Ladpura Road* and that all constructions raised by the defendant are strictly on his own land.

3.1. It was further averred that in a previously instituted suit (Suit No. 60/99), the defendant had clearly conceded that he had no concern with the plaintiff/appellant's 20 x 7 yards land, and the decree was passed accordingly. The defendant alleged that after failing to illegally grab the southern land under the guise of executing the said earlier decree, the plaintiff/appellant instituted the present suit on baseless grounds merely to harass the defendant and mislead the Court. Taking the preliminary objection that the suit is barred by the principle of *res judicata*, and pointing out that the plaintiff/appellant does not even reside in the village and has left the suit premises locked and unused for years, the defendant prayed for the dismissal of the suit with costs.

4. After hearing the pleadings of the parties, the learned Trial Court framed the following issues:

1. आया वाद—पत्र की मद सं.1 में वर्णित वादी के कब्जेशुदा बाड़े की दक्षिणी ओर लाडपुरा सड़क तक की रास्ते की भूमि पर प्रतिवादी अवैध रूप से निर्माण करने पर उतारू है और उक्त रास्ते की भूमि पर पूर्व से पश्चिम की ओर प्रतिवादी ने अवैध रूप से दीवार बना ली है, इसलिए वादी वाद में चाही गई निषेधाज्ञा प्राप्त करने का अधिकारी है?
2. आया जवाबदावे की मद संख्या— 8 व 10 में वर्णित आधार पर दावा खारिज होने योग्य है ?
3. अनुतोष ?

5. In order to substantiate their averments, the plaintiff (*Bhanwar Singh*) examined himself as PW-1 and Kishan as PW-2, and produced documentary evidence, as Ex.1 (judgment and



decree dated 04.02.2004) and Ex. 2 (court statement of *Teja*, dated 28.11.2003).

6. In rebuttal, the defendants examined DW-1 *Teja Rawat*, DW-2 *Lala*, DW-3 Mangunath, and DW-4 Ugam Singh, and produced documentary evidence marked as Ex.A-1 (site inspection report), Ex.A-2 (site plan prepared during inspection), and Ex. A-3 (police report and map).

7. After hearing the arguments advanced by the respective parties and examining the evidence on record, the learned Trial Court decided Issue No. 2 against the defendants and Issue No. 1 against the plaintiffs/appellants, and ultimately dismissed the suit for permanent and mandatory injunction vide judgment and decree dated 10.08.2010.

8. Aggrieved thereby, the plaintiffs/appellants preferred a civil first appeal, being Civil Appeal No. 660/2014.

9. By the impugned judgment and decree dated 11.11.2024, the learned First Appellate Court, upon considering the facts of the case and the record thereof, dismissed the appeal and affirmed the judgment and decree passed by the learned Trial Court.

10. The plaintiffs/appellants, being aggrieved by the concurrent findings of fact recorded by both the learned Courts below, have preferred the present civil second appeal under Section 100 of the CPC.

11. Learned counsel for the appellants submits that the impugned judgments and decrees are contrary to the record and were rendered without due regard to the applicable law. He submits that the learned Courts below erred in deciding Issue



No.1 against the plaintiffs by placing reliance on the commissioner's report. He, accordingly, prays that the appeal be admitted on the substantial questions of law framed in the memorandum of appeal, and that the impugned judgments and decrees be set aside.

12. Heard learned counsel for the appellant and perused the material available on record.

13. A bare perusal of the record reveals that the suit for permanent and mandatory injunction was founded on the assertion that the defendant, in defiance of a prior decree dated 04.02.2004 (passed in Civil Suit No. 60/99), had obstructed the plaintiff/appellant's southern pathway leading to the Ladpura Road by erecting a 3-foot-high boundary wall extending 7 yards in length. It was the specific case of the plaintiff/appellant that he had been utilizing this southern pathway for ingress and egress since the time his father purchased the property on 16.03.1964.

14. A perusal of the impugned judgments shows that the First Appellate Court has meticulously analyzed the oral and documentary evidence on record while affirming the findings of the Trial Court on Issue No. 1. The burden to prove the obstruction of the southern pathway rested squarely upon the plaintiff/appellant. However, the plaintiff/appellant (PW-1) himself deposed in his statement that there is no door on the southern side of his property. This was further corroborated by his own witness, PW-2 (*Kishan*), who deposed that the entrance to the plaintiff/appellant's house and enclosure (*Bada*) is situated towards the North. Therefore, the learned First Appellate Court



concluded that the Courts below rightly decided Issue No. 1 against the plaintiffs/appellants.

15. Furthermore, the learned First Appellate Court has also observed that the documentary evidence, specifically the Commissioner's Report (Ex. A-1) and the Site Plan (Ex. A-2), categorically establishes that the property immediately South of the plaintiff/appellant's land belongs to *Bhagchand*, and the defendant's property is situated even further South of *Bhagchand's* plot. It was also observed that witnesses examined on behalf of the defendant have also consistently denied the raising of any 3-foot wall or obstruction on the *Ladpura Road*, which assertion the plaintiff/appellant has failed to refute by leading cogent evidence.

16. Therefore, in view of the foregoing discussion, this Court is of the considered opinion that there is no legal infirmity, misreading of evidence, or perversity in the reasons recorded by both the learned Courts below while dismissing the appeal as well as suit filed by the appellant. All the arguments advanced by the learned counsel for the appellants are essentially pure questions of fact, which do not give rise to any substantial question of law.

17. It is trite law that the condition precedent for entertaining a second appeal is the existence of a substantial question of law.

18. A second appeal can be entertained only if a substantial question of law is involved in the case, and it is not within the domain of the High Court to re-appreciate the factual grounds on which the findings were arrived at by the last court of fact, being the first appellate court. As such, a second appeal cannot be



decided on factual grounds; rather, the conditions mentioned in Section 100 of the CPC must be complied with to admit and maintain a second appeal.

19. In view of the discussions made hereinabove, no question of law, much less any substantial question of law, is involved in the present second appeal requiring interference by this Court in the exercise of its jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

20. In the absence of any substantial question of law, the impugned judgment and decree passed by both the learned Courts below stands confirmed. As a result thereof, the present civil second appeal, being devoid of merit, is hereby dismissed with no order as to costs.

21. As a necessary corollary, all pending application(s), if any, shall stand disposed of.

(MANEESH SHARMA),J