

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 3157/2026

Shyamlal S/o Gurudasmal, Aged About 50 Years, Resident Of Main Chourah, Madanganj, Kishangarh, District Ajmer, Rajasthan.

-----Petitioner/Defendant

Versus

Vasudev S/o Shri Indarchand Chatvani, Aged About 68 Years, Resident Of Chandra Colony, Madanganj, Kishangarh, District Ajmer, Rajasthan As Per The Order Of Honble Rajasthan Court Substituted Shri Akshay Jain S/o Shri Vijay Jain, Age 34 Years Approx, Resident Of Vijyant Kutir Vihar, R.k. Colony, City Road, Madanganj, Kishangarh.

-----Respondent/Plaintiff

For Petitioner(s)	:	Mr. Aman Pareek with Mr. Shiva Panwar
For Respondent(s)	:	Mr. Deepak Khandelwal

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Reportable

Date of hearing and conclusion of arguments	17.02.2026
Date on which the judgment was reserved	17.02.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	26.02.2026

1. The present writ petition has been filed assailing the order dated 20.01.2026, passed by learned Additional District and Session Judge No. 1 Kishangarh, District- Ajmer, in Civil Misc. Suit No. 18/2012 (CIS No. 520/2014), whereby, the application filed by the petitioner-defendant under Order 18 Rule 17 read with Section 151 CPC has been dismissed.

2. The brief fact of the case, as borne out from the record, are that the plaintiff–respondent instituted a suit for ejectment against the defendant–petitioner under Section 106 of the Transfer of Property Act, 1882 in the year 2012. The suit was founded on the assertion that the respondent is the owner of the suit property and that the defendant–petitioner was occupying the same as a tenant. It was alleged that the petitioner had defaulted in payment of rent. Consequently, a notice dated 22.02.2012 under Section 106 of the Transfer of Property Act, 1882 was issued terminating the tenancy, and thereafter, the present suit for ejectment was filed.

2.1 The defendant–petitioner filed a written statement denying the averments made in the plaint. It was contended that after the enforcement of the Rajasthan Rent Control Act, 2001, the proceedings under Section 106 of the Transfer of Property Act were not maintainable. It was further asserted that the description and dimensions of the disputed property were not properly specified. The petitioner denied any default in payment of rent and contended that the suit was premature, devoid of cause of action, and not in conformity with the mandatory requirements of Section 106 of the Transfer of Property Act.

2.2 On the basis of the pleadings, the learned trial Court framed five issues. Subsequently, in view of the order dated 17.09.2019 passed by a Co-ordinate Bench of this Court in S.B. Civil First Appeal No. 544/2009, the proceedings in the present suit remained stayed *sine die* from 17.09.2019 to 24.02.2025.

2.3 Thereafter, on 24.02.2025, the plaintiff–respondent moved an application under Order 22 Rule 10 CPC stating that he had

purchased the suit property vide a registered sale deed dated 20.12.2024 from the original plaintiff and prayed for his substitution as plaintiff and for revival of the suit.

2.4 The learned trial Court summoned the relevant record and issued notice to the defendant–petitioner, who filed a reply contending that the application under Order 22 Rule 10 CPC was not maintainable.

2.5 Upon hearing the parties, the learned trial Court, vide order dated 25.08.2025, allowed the said application and ordered substitution of the plaintiff–respondent as plaintiff in the suit, directing amendment of the cause title.

2.6 Aggrieved thereby, the defendant–petitioner preferred an application under Section 151 CPC contending that the suit could not be continued by the substituted plaintiff. The said application was dismissed by order dated 27.10.2025.

2.7 Subsequently, the petitioner filed an application under Order 18 Rule 17 CPC praying that since the respondent claimed to have purchased the suit property through a registered sale deed, which had not been produced before the learned trial Court, therefore, the plaintiff–respondent be directed to appear for evidence along with the original registered sale deed.

2.8 The plaintiff–respondent filed a reply to the said application, contending that the same had been filed with the sole intention of delaying the proceedings.

2.9 After hearing both parties, the learned trial Court, vide order dated 20.01.2026, dismissed the application filed under Order 18 Rule 17 CPC.

3. Being aggrieved by the order dated 20.01.2026, the defendant-petitioner has preferred the present writ petition.

4. Learned counsel for the defendant-petitioner contended that the alleged sale deed, on the basis of which the plaintiff-respondent was substituted as plaintiff, has not been tendered in evidence, nor has the petitioner been afforded an opportunity to cross-examine the plaintiff-respondent in respect thereof.

4.1 Learned counsel submitted that it is a settled principle of law that a substituted party must adduce cogent evidence demonstrating the acquisition of interest from the original party. Mere filing of a copy of the sale deed does not suffice to establish valid transfer of title.

4.2 Learned counsel for the defendant-petitioner further argued that the alleged sale deed has not been exhibited in accordance with law; no permission under Section 65 of the Indian Evidence Act, 1872 has been sought; no affidavit of evidence has been filed by the plaintiff-respondent; and material contradictions exist in the contents of the alleged sale deed. In view of the aforesaid, it was prayed that the impugned order dated 20.01.2026 be quashed and set aside, and the application under Order 18 Rule 17 CPC be allowed.

4.3 Learned counsel for the petitioner relied upon the following judgments to buttress his argument:-

(i) ***Ram Swaroop and Ors. Vs. Bholu Ram***; AIR 1991 Rajasthan 56.

(ii) ***Shubhkaran Singh Vs. Abhay Raj Singh and Ors.***; 2025 INSC 628.

(iii) ***Cement Corporation of India Ltd. vs Purya & Ors.;***

Appeal (Civil) 6986/1999 (decided on 07.10.2004)

5. Per contra, learned counsel for the plaintiff-respondent emphasized that the application under Order 22 Rule 10 CPC was filed on 17.02.2025 along with certified copy of the registered sale-deed. He further submits that a detailed reply was filed by plaintiff-petitioner to said application. After considering the application and the reply of defendant-petitioner, the learned Trial Court allowed the application vide order dated 25.08.2025 by specifically holding that in para 9 at page 4 of the sale-deed, on which the plaintiff-respondent relies for his title to the disputed premises, explicitly mentions his right to be substituted in place of the original plaintiff-respondent.

5.1 Further, learned counsel for respondent submitted that aggrieved by the order dated 25.08.2025, the defendant-petitioner preferred an application dated 04.08.2025, under Section 151 CPC contending that the suit could not be continued by the substituted plaintiff. The said application was dismissed by order dated 27.10.2025. Accordingly, the order dated 25.08.2025 attained finality.

5.2 It is further argued that the defendant-respondent has not contested or denied the validity of this sale deed. The sole purpose of the defendant-respondent's petition appears to be an attempt to delay the proceedings and thus, an application dated 12.01.2026 was filed by the petitioner under Order 18 Rule 17 CPC praying therein that the sale-deed dated 20.12.2024 has not been filed in original.

6. Heard and perused the material available on record.
7. This Court finds that on the basis of certified copy of the sale deed dated 20.12.2024, the respondent, Akshay Jain, has already been impleaded as a party vide order dated 28.05.2025, which order has attained finality as the same was never challenged. Thereafter, the petitioner preferred an application under Section 151 CPC, assailing the order dated 25.08.2025; however, the said application came to be dismissed vide order dated 27.10.2025 and has also attained finality. Subsequently, an application has been filed under Order 18 Rule 17 CPC.
8. Order 18 Rule 17 CPC reads as under:
- "17. Court may recall and examine witness.—***
The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit."
9. A bare perusal of Order 18 Rule 17 CPC makes it abundantly clear that the power to recall and examine a witness at any stage of the suit is vested in the Court primarily for its own satisfaction, where it considers it necessary to put certain questions to a witness who has already been examined. The said provision does not confer an unfettered right upon a party to seek recall of a witness for the purpose of filling up lacunae or producing additional material on record or for cross examination.
10. It is well settled that such power is discretionary and is to be exercised sparingly, only when the Court itself deems it appropriate to clarify any doubt or to elicit necessary information. In the absence of any requirement felt by the Court to put

questions to the witness, a mere application by a party seeking to recall a witness under Order 18 Rule 17 CPC cannot be allowed as a matter of course.

11. The aforesaid legal position has been reiterated by the Hon'ble Supreme Court in **Shubhkaran Singh** (supra), wherein it has been categorically held that the provision is intended to enable the Court to clarify any issue and not to permit parties to reopen evidence at their convenience. The relevant paragraph of the judgment is reproduced herein below:

"6. Order 18 Rule 17 reads as under:

17. The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

7. This Rule provides the Court with a power which is necessary for the proper conduct of a case. If it appears to a court trying the suit at any stage of the proceedings that it is necessary to recall and further examine a witness it can always do so. This power can be exercised even at the stage of writing a judgment by the court. It is, however, proper that this power should not be exercised lightly and the Rule is that it should be used sparingly and in exceptional cases only. The power is to be used for removing ambiguities, for clarifying the statement and not for the purposes of filling up the lacuna in a party's case. It is true that the power can be exercised by the Court at its own initiative and may even be so done at the instance of a party. Section 165 of the Evidence Act provides that a Judge may in order to discover or obtain proper proof of relevant facts, ask any question he pleases in any

form at any time of any witness about any fact relevant. The Section further provides that the parties shall not be entitled to make any objection to any such question, nor cross-examine any witness upon any answer given in reply to any such question without the leave of the Court. If the provisions of Order 18 Rule 17 are read along with the provisions of Section 165 of the Evidence Act it is clear that the power to recall and re-examine a witness is exclusively that of the court trying the suit. The parties to the suit cannot take any objection to the question asked nor can they be permitted to cross-examine any witness without the leave of the court.

8. The said rule, in our opinion, makes it abundantly clear that the right to put questions to the witness recalled Under Rule 17 is given only to the court and even cross-examination is not ordinarily permitted on the answers given to such questions, without the leave of the court. Under that Rule therefore, a witness cannot be recalled at the instance of a party for the purpose of examining, cross examining or re-examining, and that Rule is not intended to serve such purpose, and the purpose for which that Rule can be invoked is the one that is indicated above."

(emphasis supplied)

12. In view of the settled position of law, this Court is of the considered opinion that unless the learned Rent Tribunal itself deems it necessary to recall a witness for the purpose of putting specific questions, the prayer made by the petitioner to summon the witness along with documents under Order 18 Rule 17 CPC cannot be granted.

13. With the aforesaid observations, the present civil writ petition stands **dismissed**.

14. Pending application(s), if any, stands disposed of.

(BIPIN GUPTA),J

Sudha/