

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Second Appeal No. 165/2026
CNR: RJHC020319812026 | URN: CSA / 262U / 2026

Vijendra S/o Chandiram, Aged About 35 Years, R/o Makando,
Tehsil Buhana, District Jhunjhunu, Rajasthan.

----Appellant

Versus

1. Shanti Devi W/o Shriram, Aged About 75 Years, R/o Makando, Tehsil Buhana, District Jhunjhunu, Rajasthan.
2. Harpal S/o Shriram, Aged About 48 Years, R/o Makando, Tehsil Buhana, District Jhunjhunu, Rajasthan.
3. Mahesh S/o Shriram, Aged About 45 Years, R/o Makando, Tehsil Buhana, District Jhunjhunu, Rajasthan.
4. Ramniwas S/o Shriram, Aged About 40 Years, R/o Makando, Tehsil Buhana, District Jhunjhunu, Rajasthan.
5. Mahendra D/o Shriram, Aged About 50 Years, R/o Makando, Tehsil Buhana, District Jhunjhunu, Rajasthan.
6. Ram Singh S/o Mahadaram, Aged About 60 Years, R/o Makando, Tehsil Buhana, District Jhunjhunu, Rajasthan.

----Respondents

For Appellant(s) : Mr. Sudhir Kumar Yadav
Mr. Rajesh Kumar Yadav

For Respondent(s) :

HON'BLE MR. JUSTICE MANEESH SHARMA

Order

27/07/2026

1. The appellant is before this Court challenging the judgment and decree dated 10.03.2026 passed by the learned Additional District Judge No. 1, Khetri, in Regular Appeal No. 66/2019, whereby the appeal filed by the plaintiffs/respondents was allowed, and the judgment and decree dated 18.09.2019 passed by the learned Civil Judge, Buhana, Jhunjhunu, in Civil Suit No. 39/2016 was set aside.
2. The facts germane to the present second appeal, in brief, are that the plaintiffs/respondents No. 1 to 5 instituted a civil suit for

recovery of possession, as well as for mandatory and permanent injunction against the defendants.

2.1. It was averred in the plaint that the plaintiffs are in peaceful possession of a plot admeasuring 500 square yards, for which an allotment *Patta* was issued in favour of the predecessor-in-title, i.e., *Shriram* on 17.04.1985 by the Tehsildar, Khetri. The plaintiffs pleaded that adjacent to the eastern side of their land lies vacant land, and that defendant No. 1 (appellant herein) forcibly encroached upon and took possession of a strip of the plaintiffs' land measuring 15.55 square yards (7 ft. in width and 20 ft. in length). It was further alleged that defendant No. 2, the uncle of defendant No. 1, was threatening the plaintiffs with further dispossession.

2.2. Accordingly, the plaintiffs prayed for a decree of possession against defendant No. 1 for the said 15.55 square yards of land and for the grant of a permanent and mandatory injunction.

3. In reply, defendant No. 1 filed a written statement controverting the averments made in the plaint. It was contended that the plaintiffs did not hold any old possession on the eastern side of the property and had misstated the boundaries of the disputed land. Defendant No. 1 specifically pleaded that the land for which the *Patta* was allegedly issued was recorded as *gair mumkin johad* (catchment area/water body) in the revenue records. It was asserted that the said *Patta* was *void ab initio* and conferred no legal rights upon the plaintiffs. The defendants, accordingly, prayed for the dismissal of the civil suit.

4. Based on the pleadings of the parties, the learned Trial Court framed the following issues:

1. क्या वादीगण, वादपत्र के अनुतोष खण्ड के पैरा (A) में वर्णित भूखण्ड में प्रतिवादी सं. 1 द्वारा किये गये निर्माण को हटवाकर, प्रतिवादी सं. 1 को उक्त भूखण्ड से बेदखल करवाकर स्वयं का कब्जा करवाने के अधिकारी है ?

जिम्मे वादीगण

2. यदि वादीगण, प्रतिवादीगण के विरुद्ध इस आशय की स्थाई निषेधाज्ञा की डिक्री प्राप्त करने के अधिकारी है कि प्रतिवादीगण वादपत्र के पैरा सं. 1 में वर्णित भूखण्ड पर किसी प्रकार का कब्जा, निर्माण करने तथा उक्त भूखण्ड में वादीगण के उपयोग व उपभोग में किसी प्रकार की बाधा उत्पन्न करने से प्रवारित रहें ?

जिम्मे वादीगण

3. क्या वादीगण का वाद पक्षकारों के कुसंयोजन तथा कम न्यायशुल्क पर पेश किये जाने के कारण खारिज किये जाने योग्य है ?

जिम्मे प्रतिवादीगण

4. क्या वादीगण का वाद इस न्यायालय के क्षेत्राधिकार का नहीं होने के कारण खारिज किये जाने योग्य है ?

जिम्मे प्रतिवादीगण

5. अनुतोष ?

5. In order to support their contentions, the plaintiffs examined PW-1 *Harpal*, PW-2 *Meharchand*, PW-3 *Rajpal*, and PW-4 *Ramesh Kumar*. The plaintiffs also produced documentary evidence, which was marked as Ex. 1 (site map annexed with the Patta), Ex. 2 (Patta), Ex. 3 (Challan receipt), Ex. 4 (Site Plan), and Ex. 5 (Water Department receipt).

6. *Per Contra* the defendants examined DW-1 *Vijendra Singh* and DW-2 *Rajvir Singh*. In documentary evidence, the defendants produced and proved Ex. A-1 (map annexed to the Commissioner's report), Ex. A-2 (comparative area report of the disputed land), Ex. A-3 (Jamabandi / Record of Rights of the previous Khasra number), Ex. A-4 and Ex. A-5 (current Jamabandis), and Ex. A-6 (true copy of the site Commissioner's report).

7. After hearing the arguments and examining the record, the learned Trial Court dismissed the suit vide judgment and decree dated 18.09.2019. The learned Trial Court further observed that it

is open for the competent authorities to initiate appropriate proceedings against the plaintiffs in respect of the said *Patta*.

8. Aggrieved thereby, the plaintiffs preferred a regular first appeal before the learned Additional District Judge No. 1, Khetri, District Jhunjhunu.

9. After careful examination of the matter, the learned First Appellate Court allowed the appeal vide the impugned judgment and decree dated 10.03.2026.

10. Aggrieved by the aforesaid judgment and decree passed by the learned First Appellate Court, the present appellant has preferred the present second appeal.

11. Learned counsel for the appellant submits that the learned First Appellate Court erred in decreeing the suit without appreciating the fact that the plaintiffs have no valid title to the suit property, as the same is *gair mumkin johad* land. He further submits that the learned First Appellate Court erred by not considering the fact that the *Patta* was issued by the Tehsildar illegally and *dehors* the law. He lastly submits that the impugned judgment and decree is unsustainable in the eyes of law, and accordingly, prays for setting aside the same.

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

13. A bare perusal of the record reveals that the plaintiffs claim ownership of the suit property by virtue of a *Patta* dated 17.04.1985, and that it was alleged that the present appellant (defendant No. 1) had encroached over a part of the property owned by the plaintiffs.

14. It is also revealed that the learned Trial Court had initially dismissed the suit, the learned First Appellate Court reversed the said findings upon appreciating a crucial admission made by the defendants, where the defendants explicitly admitted that they do not possess any title over the disputed land. On the contrary, the plaintiffs successfully proved their title by virtue of the *Patta* dated 17.04.1985 issued by the Tehsildar, Khetri.

15. From a perusal of the record, it is evident that the plaintiffs are entitled to a decree of possession, and the same has been validly granted by the learned First Appellate Court. Admittedly, the present appellant never challenged the validity of the *Patta* dated 17.04.1985 issued by the Tehsildar, Khetri, granted in favour of the plaintiffs' predecessor-in-title during the original proceedings by filing either any cross-suit for declaration or a counter claim to that effect.

16. Since the appellant failed to establish his title over the suit property and further failed to assail the legality and validity of the *Patta* dated 17.04.1985 issued by the Tehsildar, Khetri, at the threshold by filing a counter claim or cross-suit for declaration, he cannot now be allowed to raise such pleas in the absence of any foundation at this belated stage. Therefore, the arguments put forth on behalf of the appellant cannot be accepted, that too on the face of the observation of the learned Trial Court that the competent authority is free to initiate appropriate action against the plaintiffs in this behalf. The existence of procedural irregularities in the issuance of the *Patta* dated 17.04.1985 does not, by itself, confer any right upon a third party to encroach upon the plaintiff's property. As long as the *Patta* dated 17.04.1985

remains valid, no third party is entitled to take possession of or encroach upon the property.

17. In view of the foregoing discussion, I find that the learned First Appellate Court has not committed any illegality or perversity in allowing the appeal or the reasons recorded thereof. All the arguments advanced by the learned counsel for the appellant are essentially pure questions of fact, which do not give rise to any substantial question of law.

18. That in the decision reported in ***Nazir Mohamed vs J.Kamala And Ors.***¹ the Hon'ble Apex Court held that the condition precedent for entertaining and deciding a second appeal being the existence of a substantial question of law.

19. 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 investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. As such, second appeal cannot be decided on equitable grounds rather conditions mentioned in Section 100 of CPC must be complied with to admit and maintain a second appeal.

20. In view of the discussions made herein above, no question of law much less any substantial question of law is involved in the second appeal requiring interference by this court in exercise of its jurisdiction under section 100 of Code of Civil Procedure.

21. Since no substantial question of law is made out, the impugned judgment and decree passed by the First Appellate Court is hereby affirmed and in result thereof, the present civil

1 AIR 2020 SC (4321)

second appeal being devoid of merits, is hereby dismissed with no order as to costs.

22. All pending applications, if any, shall stand disposed of.

(MANEESH SHARMA),J

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