

RAJASTHAN HIGH COURT

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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 3255/2025

Sajjad Husain S/o Late Yusuf, R/o Mohalla Chejaran, Ward No. 44, Jhunjhunu, Tehsil And District Jhunjhunu, Presently R/o Churu Bypass Road, Ward No. 60, Jhunjhunu, Tehsil And District Jhunjhunu

----Appellant/Applicant

Versus

Inayat Husain S/o Late Yusuf, R/o Chejaran, Ward No.44, Jhunjhunu, Tehsil And District Jhunjhunu

----Respondent/Non Applicant

For Appellant(s)	:	Mr. PL Sharma
For Respondent(s)	:	Mr. Brij Bhusham Ojha

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Date of hearing and conclusion of arguments	21.05.2026
Date on which the judgment was reserved	21.05.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	27.05.2026

1. The present Civil Miscellaneous Appeal has been filed assailing the order dated 26.05.2025, passed by the learned Additional District Judge No. 1, Jhunjhunu, in Civil Misc. Case No. 03/2022 (CIS No. 37/2020), whereby the contempt application filed by the applicant-appellant under Order XXXIX Rule 2A CPC has been rejected.
2. The brief facts of the case, relevant for the present appeal, are that the applicant-appellant instituted a suit for partition and permanent injunction against the defendant-respondent in respect of the disputed property, along with an application under Order

XXXIX Rules 1 and 2 CPC seeking interim relief. During the pendency of the said application, the learned Court below vide order dated 28.07.2020 appointed a Site Commissioner for inspection of the disputed property. Thereafter, upon consideration of the Site Commissioner's report, the learned Court below vide order dated 06.08.2020 directed the parties not to sell or transfer the disputed property and further directed maintenance of status quo in respect of the suit property. The said status quo order was subsequently extended till the next date of hearing vide order dated 02.11.2020.

2.1 The case of the applicant-appellant is that despite the subsistence of the aforesaid status quo order, the defendant-respondent and his wife allegedly interfered with the suit property by breaking open the lock of the Tibari situated in front of the applicant-appellant's house (Kotdi), removing household articles belonging to the applicant-appellant, and installing electrical fittings including an electricity board and fan. He further alleged that on 17.09.2020, the defendant-respondent attempted to establish possession by placing certain household articles in the said portion, thereby altering the nature and character of the suit property, despite being aware of the subsisting Court order.

2.2 Furthermore, the applicant-appellant on 18.09.2020, a complaint was lodged at Police Station Kotwali, Jhunjhunu, and thereafter a representation was made before the Superintendent of Police, Jhunjhunu. In the meantime, proceedings under Sections 107 and 116(3) Cr.P.C. were initiated before the Sub-Divisional Officer, Jhunjhunu against the defendant-respondent and his wife. He further alleges that the defendant-respondent

removed household articles from the *Tibari*, placed them in the *verandah*, and also placed his own *charpai* in the *Tibari*, thereby changing the nature of the suit property. He also alleged that defendant Nos. 3 to 8 were threatened, resulting in their alleged dispossession and shifting from the property.

2.3 On the basis of the aforesaid allegations, the applicant-appellant filed an application under Order XXXIX Rule 2A CPC seeking action against the defendant-respondent for alleged disobedience of the interim order dated 06.08.2020.

2.4 The defendant-respondent contested the application by filing a reply denying all allegations and asserting that the applicant-appellant had no share in the disputed property. He further denied that any act of installation of electrical fittings or placement of household articles had taken place, or that any violation of the Court's order had occurred. He also contended that the Site Commissioner's report was not conclusive on the issue of possession. He further claimed that he had paid Rs.2.50 lakhs to the applicant-appellant towards his share in the property in the year 2013–2014 at the time of construction of the house, and specifically denied any breach of the status quo order.

2.5 The defendant-respondent further stated that on 18.10.2020, the applicant-appellant along with his son and others allegedly trespassed into his house and assaulted him and his wife, in relation to which an FIR was lodged by the defendant-respondent and a challan was subsequently filed. Allegations regarding complaints before the police authorities and proceedings under Sections 107 and 116(3) Cr.P.C. were also denied.

2.6 In support of their respective cases, the applicant-appellant examined witnesses AW-1 to AW-3 and exhibited documents Ex.1 to Ex.9, whereas the defendant-respondent examined himself as NADW-1 and exhibited documents Ex.NA-1 to Ex.NA-7.

2.7 Ultimately, upon appreciation of the pleadings, evidence, and material on record, the learned Court below vide order dated 26.05.2025 dismissed the application filed by the applicant-appellant under Order XXXIX Rule 2A CPC.

3. Being aggrieved by the said order dated 26.05.2025, the applicant-appellant has preferred the present Civil Miscellaneous Appeal before this Court.

4. Learned counsel for the appellant submitted that the learned Trial Court failed to exercise jurisdiction vested in it by law while passing the impugned order dated 26.05.2025, which is contrary to the settled principles governing proceedings under Order XXXIX Rule 2A CPC and the material available on record.

4.1 Learned counsel for the appellant contended that the learned Trial Court failed to appreciate the true scope of proceedings under Order XXXIX Rule 2A CPC and mechanically rejected the application despite material evidence demonstrating willful disobedience of the status quo order dated 06.08.2020.

4.2 Learned counsel for the appellant submitted that the respondent, in his reply, specifically denied installation of electricity fittings, electricity board and fan in the disputed *Tibari*; however, he himself admitted that he had fitted the fan. It was never the respondent's case that the electricity line had already been installed earlier. According to learned counsel, such

admission clearly establishes violation of the status quo order during its subsistence.

4.3 Learned counsel for the appellant further submitted that despite the respondent having admitted knowledge of the injunction order and fitting of the fan, the learned Trial Court failed to draw the necessary adverse inference and ignored the material contradiction between the respondent's pleadings and evidence.

4.4 Learned counsel for the appellant further argued that the admitted act of fitting the fan itself constituted sufficient prima facie material to establish willful disobedience under Order XXXIX Rule 2A CPC, yet the learned Trial Court failed to appreciate the legal effect of such admission and rejected the application on hyper-technical grounds.

4.5 Learned counsel for the appellant further contended that proceedings under Order XXXIX Rule 2A CPC require only prima facie satisfaction regarding intentional non-compliance of the Court's order, and the conduct of the respondent clearly disclosed deliberate violation of the status quo order dated 06.08.2020.

4.6 On the aforesaid grounds, learned counsel for the appellant prayed that the impugned order dated 26.05.2025 be quashed and set aside, and the application filed under Order XXXIX Rule 2A CPC be allowed.

5. Per contra, learned counsel for the respondent supported the impugned order dated 26.05.2025 and submitted that the learned Court below has rightly appreciated the evidence available on record and has committed no illegality while rejecting the application filed under Order XXXIX Rule 2A CPC. He contended that the respondent consistently denied having any share in the

disputed property and specifically pleaded that neither he nor his wife had installed any electricity wiring, electricity board or fan in the disputed premises on 17.09.2020, nor had they placed any belongings therein. Learned counsel further submitted that the appellant was attempting to claim possession solely on the basis of the Commissioner's report, although the Commissioner was not competent to report regarding possession. He further argued that the respondent had constructed his house in the year 2013-2014 and had already paid an amount of Rs. 2,50,000/- towards the alleged share of the disputed property, and therefore, no subsisting right or share of the appellant remained therein. Learned counsel also submitted that no act amounting to contempt or violation of the order dated 06.08.2020 was ever committed by the respondent or his family members and that the present proceedings were instituted in collusion with the legal heirs of late Jafar Hussain only to harass and dispossess the respondent from the disputed property.

5.1 Learned counsel for the respondent further submitted that the appellant failed to specify the date or manner in which the alleged lock of the disputed room was broken, and no contemporaneous complaint dated 12.09.2020 was ever lodged at Police Station Kotwali against the respondent. He also contended that no notice under Sections 107/116(3) Cr.P.C. was ever served upon the respondent by the Sub-Divisional Officer, Jhunjhunu. Learned counsel further referred to the incident dated 18.10.2020, wherein the appellant's son Adil along with others allegedly entered the respondent's house and assaulted the respondent and his wife, regarding which a report was lodged by the respondent's wife at

Police Station Kotwali and, after investigation, charge-sheet came to be filed against the accused persons before the Competent Court.

5.2 On the aforesaid grounds, learned counsel for the respondent prayed that the present appeal being devoid of merit, deserves to be dismissed and the impugned order dated 26.05.2025 passed by the learned Court below be upheld.

6. Heard learned counsel for both the parties and perused material available on record.

6.1 Before adverting to the merits of the case, it would be apposite to examine the scope of interference available to this Court while exercising appellate jurisdiction.

6.2 The scope of interference by an appellate Court while exercising the appellate jurisdiction, the Court cannot set aside or reverse the order of the court below solely on the ground that another view on the same set of facts is possible. Where the view taken by the trial Court is a plausible and reasonable one, based on the material on record and consistent with law, the appellate Court is not entitled to substitute its own opinion merely because it would have arrived at a different conclusion. Interference is warranted only where the impugned order suffers from perversity, illegality, material irregularity, or has been passed in disregard of settled principles of law. The jurisdiction of the appellate Court is not one of re-appreciation to reach an alternative view but one of correction, confined strictly to cases where the findings are unsustainable in law or suffer from jurisdictional error.

6.3 In the case of ***V. Prabhakara v. Basavaraj K. (Dead) by Legal Representatives***, reported in ***(2022) 1 SCC 115***, the

Hon'ble Apex Court held that though the first appellate court may reappreciate evidence while exercising its appellate jurisdiction, it must give due weight to the trial court's findings based on witness demeanour. The appellate court cannot substitute its view without cogent reasons, and where two views are possible, the trial court's view should ordinarily prevail. The relevant paragraphs of the judgments are reproduced herein below:-

"22.The first appellate court while exercising power under Section 96 can re-do the exercise of the trial court. However, such a power is expected to be exercised with caution. The reason being, the trial court alone has the pleasure of seeing the demeanour of the witness. Therefore, it has got its own advantage in assessing the statement of the witnesses which may not be available to the appellate court. In exercising such a power, the appellate court has to keep in mind the views of the trial court. If it finds that the trial court is wrong, its decision should be on the reasoning given. A mere substitution of views, without discussing the findings of the trial court, by the appellate court is not permissible. If two views are possible, it would only be appropriate to go with the view expressed by the trial court. While adopting reasoning in support of its findings, the appellate court is not expected to go on moral grounds alone."

(Emphasis supplied)

7. Before advertng to the rival submissions advanced on behalf of the parties, it would be appropriate to reproduce the relevant provisions of Order XXXIX Rule 2A CPC, for the sake of convenience and ready reference:

"2A. Consequence of disobedience or breach of injunction.—

—(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto."

7.1 From the scheme of the provisions contained in Order XXXIX CPC, it is evident that while the Court is empowered to grant temporary injunctions or issue appropriate directions for preservation of the suit property pending adjudication of the dispute, it is equally vested with the authority under Rule 2A to take punitive action against a party who wilfully breaches or disobeys such orders. However, since the said provision carries penal consequences, the power thereunder is required to be exercised cautiously and only upon clear proof of deliberate and substantial violation affecting the subject matter of the suit or the rights of the parties.

7.2 In the present matter, admittedly, the learned Trial Court had passed an interim order dated 06.08.2020 directing all the parties

to the partition suit not to alienate the suit property or create any third-party rights in favour of any person. The parties were further directed to maintain status quo with respect to the suit property. The said status quo order was subsequently extended till the next date of hearing vide order dated 02.11.2020.

7.3 Thus, while considering the scope of the relevant provisions and the extent of the powers vested in this Court, this Court finds that the learned Trial Court has comprehensively appreciated the oral as well as documentary evidence adduced by both parties and has rightly concluded that the applicant-appellant failed to establish any wilful or deliberate disobedience of the interim order dated 06.08.2020. The allegations pertaining to the breaking of locks, removal of household articles, and installation of electrical fittings, including an electric board and fan, were not substantiated by cogent, convincing, and reliable evidence.

7.4 The learned Trial Court has rightly considered the admissions made by PW-1 Sajjad Hussain during his cross-examination, wherein he categorically admitted that he had neither personally witnessed the alleged breaking of locks nor seen the installation of the electrical fittings and fan. Likewise, witness Mohammad Hussain admitted that he had no direct knowledge of the alleged incident and had merely heard about the same from another individual. Similarly, PW-2 Mohammad Arif failed to produce any independent corroborative material or documentary evidence to establish that electrician Khurshid had installed the alleged electrical fittings at the instance of the respondent on the date alleged. Thus, the testimony led by the applicant-appellant

remained hearsay, uncorroborated, and insufficient to establish intentional breach of the injunction order.

7.5 This Court further finds that the learned Trial Court correctly observed that no material evidence was brought on record to demonstrate that any substantial alteration had been made in the nature, character, possession, or status of the disputed property subsequent to the passing of the interim order dated 06.08.2020. Mere installation of a fan or electrical fittings, in the absence of proof regarding the date of installation or its effect upon the status of the property, cannot by itself amount to violation of a status quo order so as to attract proceedings under Order XXXIX Rule 2A CPC. The alleged acts neither demonstrated a material change in the property nor established any overt intention to defeat the order passed by the Court.

7.6 The learned Trial Court has also rightly held that the allegations relating to removal of household articles and breaking of locks primarily involve disputed questions of fact and allegations of criminal misconduct, for which separate criminal proceedings had already been initiated before the Competent Authority. Such allegations, without clear and convincing proof establishing intentional breach of the injunction order or material alteration of the suit property, cannot furnish a valid basis for holding the respondent guilty under Order XXXIX Rule 2A CPC.

7.7 This Court is of the considered opinion that the findings recorded by the learned Trial Court are founded upon proper appreciation of the evidence on record and are fully consistent with the settled principles governing proceedings under Order

XXXIX Rule 2A CPC. The conclusions drawn by the learned Trial Court are neither arbitrary, perverse, nor contrary to the material available on record. Rather, the learned Trial Court has exercised its jurisdiction judiciously and in accordance with law.

7.8 Accordingly, this Court finds no infirmity, illegality, perversity, or jurisdictional error in the impugned order dismissing the application under Order XXXIX Rule 2A CPC.

7.9 Consequently, the present appeal, being devoid of merit, is hereby **dismissed** and the impugned order passed by the learned Trial Court is affirmed.

7.10 Pending applications(s), if any, stand disposed of.

7.11 Record of the learned trial Court be sent back forthwith.

7.12 No order as to costs.

(BIPIN GUPTA),J