

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Second Appeal No. 251/2023

Bharatdas S/o Babudas and anr.

----Appellants-plaintiffs

Versus

Ramdayal S/o Kanhaiyalal and ors.

----Respondents-Defendants

For Appellant(s)	:	Mr. Mukesh Kumar Goyal
For Respondent(s)	:	Mr. Hari Ram Gurjar

HON'BLE MR. JUSTICE SUDESH BANSAL
Order

11/11/2025

1. Heard counsel for the appellant and respondents as also and perused the record.
2. Counsel for the appellant submits that *Chabutari* in question, marked as ABCD in the map, appended with the plaint, is constructed on the land of appellant since years together and *Chabutari* in question is in use, occupation and possession of appellant as owner.
3. Learned counsel for the appellant submits that prior to filing the present Civil Suit, defendants (respondents herein) had filed a Civil Suit No. 11/2013 to declare the *Chabutari* in question, to be on the land of public way and seeking to remove the same. In that Civil Suit, after evidence of parties, trial Court observed that *Chabutari* in question is in possession and ownership of the appellants, defendants in that suit and relied upon the judgment of Gram Panchayat dated 20.03.2006, whereunder the respondent no.1 herein was restrained not to open any gate of his house on this *Chabutari*. Accordingly, the respondents'/defendants' suit was

dismissed vide judgment dated 01.12.2017. The certified copy of judgment dated 01.12.2017 was produced by appellant in First Appeal along with application under Order 41 Rule 27 CPC but same has been denied to be taken on record and not considered in the impugned judgment.

4. Counsel for the appellant submits that in view of the judgment dated 01.12.2017, the rights of parties in respect of *Chabutari* in question have been crystallized and need not be reconsidered, as such plaintiffs' suit for permanent injunction deserves to be decreed and both the Courts below committed illegality in dismissing the plaintiff's suit.

5. The Second appeal requires hearing on the following substantial question of law:

(i) Whether First Appellate Court erred in denying to consider the judgment dated 01.12.2017, wherein the rights of parties in respect of *Chabutari* in question have already been decided, hence, in that view plaintiffs' suit for permanent injunction deserves to be decreed?

6. Heard.

7. Admit.

8. Since counsel on behalf of respondents has put in appearance, service stands complete

9. In the meanwhile, *status quo* of *Chabutari* in question as to construction and possession, as it exists today, shall be maintained by both the parties.

10. Stay application stands disposed of accordingly.

(SUDESH BANSAL),J