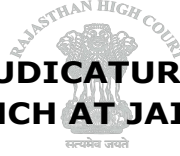




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Second Appeal No. 432/2024

Jamil Ahmad S/o Mohammad Ismail, aged about 60 Years, R/o
Kagzi Mohalla, Sawai Madhopur (Raj.)

----Appellant

Versus

Abdul Bashir S/o Id Mohammad, aged about 66 Years, R/o Kagzi
Mohalla, Sawaimadhopur, (Raj.)

----Respondent

For Appellant(s) : Mr. Shamsuddin Ansari
Mr. Moin Uddin

For Respondent(s) :

HON'BLE MR. JUSTICE MANEESH SHARMA

Order

27/03/2026

1. The present civil second appeal has been filed by the plaintiff/appellant, assailing the judgment and decree dated 22.08.2024 passed by the learned Additional District Judge, Sawai Madhopur, in Civil Regular Appeal No.42/2015 (CIS No.46/2015) titled as '*Jamil Ahmad Vs. Abdul Bashir*', whereby the appeal preferred by the plaintiff/appellant was dismissed and the judgment and decree dated 06.10.2015 passed by the learned Additional Civil Judge and Judicial Magistrate, Sawai Madhopur, in Civil Suit No.190/2015 was affirmed, whereby the suit filed by the plaintiff/appellant was rejected in terms of Order 7 Rule 11 of CPC, as being barred by law.

2. Brief facts giving rise to the present appeal are that the plaintiff/appellant filed a suit for cancellation of the compromise



dated 21.05.2012 as well as the decree passed in Civil Suit No.38/2001 titled as '*Jamil Ahmad Vs. Abdul Bashir*'.

3. In the main suit, the plaintiff sought the following reliefs:

“12. यह कि दावा वादी विरुद्ध प्रतिवादी निम्न प्रकार डिक्री फरमाया जावे।

1. कथित गैर कानूनी राजीनामा तारीख 21/05/2012 जो मुकदमा नम्बर 38/2001 में न्यायालय सिविल न्यायाधीश (क.ख.) सवाई माधोपुर ने स्वीकार किया है उसे निरस्त फरमाया जावे तथा वाद संख्या 38/2001 की सुनवाई पुनः आरम्भी की जाकर दिनांक 21/05/2012 की स्टेज से आगे कार्यवाहीपूर्ण करके बहस अंतिम सुनकर निर्णय पारित किया जावे।

2. प्रतिवादी को जरिये स्थायी निषेधाज्ञा पाबन्द किया जावे कि वह विवादित स्थल पर किसी प्रकार का निर्माण कार्य नहीं करे तथा उपयोग-उपभोग में किसी प्रकार की बाधा न तो स्वयं डाले न ही किसी से डलवाये।

3. यदि दोरानेदावा प्रतिवादी किसी प्रकार का निर्माण कार्यकर ले तो विवादित स्थल से प्रतिवादी के निर्माण को ध्वस्त करने का आदेश फरमाया जावे।

3. खर्चा मुकदमा दिलाया जावे।

4. अन्य सहायता जो मुफीद वादी हो अता फरमाई जावे।”

4. After service of notice upon the defendant/respondent, the defendant/respondent has filed an application under Order 7 Rule 11 CPC, contending that the present suit is barred by law in terms of provisions of Order 7 Rule 11(d) of CPC as well as Order 23 Rule 3A of CPC.

5. The said application was contested by the plaintiff/appellant by filing reply dated 30.05.2015, refuting the averments of the said application, and contending that the suit is maintainable since the earlier compromise was not lawful.

6. After hearing arguments of the respective parties, the learned trial Court allowed the application filed by the defendant/respondent and rejected the plaint filed by the



plaintiff/appellant being barred by law in terms of provisions of Order 23 Rule 3A of CPC vide judgment dated 06.10.2015.

7. Being aggrieved by the said judgment and decree, the plaintiff/appellant preferred a regular first appeal, whereby the learned Appellate Court after considering the facts and pleadings in the case, more particularly, the application under Order 7 Rule 11 of CPC and reply thereto, dismissed the appeal and affirmed the order dated 06.10.2015 passed by the learned Trial Court judgment and decree dated 22.08.2024.

8. Being aggrieved by the said concurrent rejections vide impugned judgments and decrees dated 06.10.2015 and 22.08.2024, the plaintiff/appellant has filed the present second appeal.

9. Learned counsel for the plaintiff/appellant submits that both the learned Courts below erred in rejecting the suit as being barred by law. He further submits that since the compromise in question was not lawful, therefore, it is always open for the plaintiff/appellant to assail the same either by filing a suit or by moving an application before the same court.

10. Heard and considered the submissions made by learned counsel for the plaintiff/appellant and perused the material available on record.

11. It is an undisputed fact that in the first round of litigation, i.e., Civil Suit No.38/2001, the suit was disposed of in view of the compromise decree dated 21.05.2012 and in the present suit, the plaintiff/appellant has prayed for a decree declaring the said compromise decree dated 21.05.2012 to be null and void.



12. Before proceeding further, it would be apt to reproduce the provisions of Order 23 Rule 3A CPC as under:

Order XXIII Rule 3A: Bar to suit.—*No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.*

13. Thus, from a bare reading of the above provision, the same clearly stipulates that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

14. From the perusal of the impugned orders dated 06.10.2015 as well as 22.08.2024, it is evident that both the learned Courts below have rejected the plaint only on the ground that the plaintiff/appellant has sought decree for cancellation of an earlier decree based on a compromise. Therefore, in view of the Order 23 Rule 3A of CPC, the suit is barred by law in terms of Order 7 Rule 11(d) of CPC. The reason so recorded by the learned court below cannot be said to be perverse as the facts of the case squarely fall within the four corners of Order 7 Rule 11(d) of CPC as well as Order 23 Rule 3A of CPC.

15. Further, the questions of law proposed in the second appeal are questions of fact and do not fall within the purview of the substantial questions of law.

16. That the Hon'ble Apex Court in the matter of **Nazir Mohamed vs J.Kamala And Ors.**,¹ has held that the condition precedent for entertaining and deciding a second appeal is the existence of a substantial question of law.

17. A second appeal can only be entertained when a substantial question of law arises in the matter. The High Court is not

1 AIR 2020 SC (4321)



empowered to re-examine the factual findings made by the first appellate court, as its jurisdiction is limited to substantial questions of law. Second appeals cannot be decided on equitable considerations; compliance with the requirements of Section 100 of CPC is mandatory for admission or entertaining a second appeal.

18. Upon consideration of the above discussion, it is clear that no question of law, much less a substantial question of law, arises in the present second appeal that would warrant interference by this Court under Section 100 of the Code of Civil Procedure.

19. Accordingly, no substantial question of law is made out, the impugned judgment and decree passed by both the learned Courts are hereby affirmed and in result thereof, the present civil second appeal being devoid of merits, is hereby dismissed.

20. Accordingly, the present second appeal fails and is hereby dismissed.

21. All other pending application(s), if any, stand disposed of.

(MANEESH SHARMA),J