

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 1711/2025

Mohini Bai D/o Shri Jagannath, W/o Shri Mathuralal,

----Appellant

Versus

Mukesh Kumar Meena S/o Shri Kantilal Meena,

----Respondent

For Appellant(s) : Mr. Sanjay Mehrish,
Mr. Rakesh Babu

For Respondent(s) : Mr. Samarth Sharma

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

31/10/2025

1. This is defendant's first appeal against the judgment and decreed dated 30.08.2025 passed in Civil Suit No.31/2016 by the Additional District Judge No.6, Kota.
2. Impugned judgment and decree has been passed in civil suit for specific performance, declaration and permanent injunction filed by respondent-plaintiff, based on agreement to sale dated 05.01.2015. According to plaintiff, deal of sale of the land in question was entered into @ Rs.2,80,000/- per *bigha* and against that, plaintiff paid Rs.5 lac on 03.01.2015, Rs.5 lac on 20.02.2015, Rs. 11 lac on 12.06.2015 and Rs.5 lac on 10.08.2015. According to plaintiff, rest sale consideration was to be paid at the time of registry, and possession was to be handed over at that time and in the meantime, defendant was required to clear the outstanding dues of Hadoti Kshetriya Gramin Bank (HKGB).

3. In the impugned judgment, it has clearly been observed that appellant-defendant in her cross-examination, admitted her signature on the agreement dated 05.01.2015 (Exhibit 1) and on the receipt dated 10.08.2015 (Exhibit 3), as also admitted the receipt of amount stated hereinabove, pursuant to this agreement.
4. The contention of counsel for appellant is that the time was essence of the contract, and when plaintiff did not make due payment within stipulated time, agreement was cancelled. Such plea has been rejected by the trial Court in the impugned judgment and suit has been decreed.
5. Indisputably, the land in question is in use, cultivation and occupation of the appellant-defendant.
6. The first appeal is a statutory appeal, which is required to be heard on facts & law, hence, the present First Appeal is admitted for hearing.
7. Record of the trial Court be summoned.
8. As an interim measure, in order to maintain equity and balance of interest of both the parties, it is desirable that appellant should refund the amount of Rs.26,00,000/- without interest to the respondent-plaintiff, for which counsel for both parties do agree, and such refund shall not affect the rights of either of the parties, to be adjudicated on merits in the present First Appeal. Since indisputably, the appellant is enjoying possession of the land in question and opposing the relief of specific performance, hence, the advance amount of sale consideration, admittedly received by appellant, has been ordered to be re-paid to respondent.

9. The amount be paid within a period of two months from today through demand draft of a Nationalized Bank in the name of respondent-plaintiff.

10. On presentation of the original demand draft before the Court, same shall be handed over to the respondent-plaintiff on furnishing a written undertaking to repay the same, if the impugned decree is sustained or as per direction issued by this Court in the present First Appeal.

11. Appellant-defendant shall not create any third party interest in the land in question, and if the due loan of Hadoti Kshetriya Gramin Bank (HKGB) has not been cleared, same be cleared by the appellant, to ensure that land in question be kept intact and unencumbered.

12. With the aforesaid, execution of impugned judgment and decreed dated 30.08.2025 shall remain stayed, though observation made in Para No.103 of the impugned decree to send information to the Income Tax Department for undertaking cash transaction of more than Rs.2 lac, shall remain operative and may be implemented.

13. It is made clear that refund of sale amount received by appellant and receipt of same by respondent, shall not affect their legal rights at the time of hearing of First Appeal on merits.

14. Service stands complete.

(SUDESH BANSAL),J