

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Second Appeal No. 495/2018

1. The Superintendent, District Jail, Tonk.
2. The State Of Rajasthan, Through District Collector, Tonk.

-----Defendants/Appellants

Versus

1. Mukesh Kumar Mittal S/o Shri Rajendra Kumar Mittal,
Resident Of Subhash Bazar, Tonk, Tehsil And District Tonk.
2. Municipal Council, Tonk, Through Its
Chairman/Commissioner, Municipal Council, Tonk
(Rajasthan).

-----Respondents

For Appellant(s)	:	Mr. Bhuwadesh Sharma, AAG with Mr. Siddharth Sharma, Asst. GC.
For Respondent(s)	:	Mr. Praveen Kumar Jain with Mr. Kamlesh Kaswan

HON'BLE MR. JUSTICE MANEESH SHARMA

Order

19/03/2026

1. The present second appeal has been filed by the defendants/appellants under Section 100 of the Code of Civil Procedure, 1908 (CPC), assailing the impugned judgment and decree dated 16.01.2018 passed by the learned Additional District & Sessions Judge, Tonk, in Civil Regular Appeal No. 53/2013 (4/2010), titled as '*Mukesh Kumar Vs. Municipal Council, Tonk & Ors.*', whereby the learned Appellate Court allowed the appeal and set aside the judgment and decree dated 12.01.2010 passed by the learned Additional Civil Judge (Senior Division), Tonk in Civil Suit No. 36/2004 (51/2002), titled as '*Mukesh Kumar Vs. Municipal Council, Tonk & Ors.*'. Consequently, the suit for

declaration and permanent injunction filed by the plaintiff/respondent No.1 - *Mukesh Kumar Mittal* was decreed by the learned Appellate Court.

2. Brief facts giving rise to the present Second Appeal are that the plaintiff/respondent No. 1 - *Mukesh Kumar Mittal*, filed a civil suit for declaration and permanent injunction. He claimed title, ownership and possession of the agricultural land bearing *Khasra Nos. 5160, 5161, 5162, 5163, and 5164, admeasuring 4 bigha 6 biswa*, situated in *Tonk*. The plaintiff stated that he had purchased the said property from its *Khatedar* via registered sale deeds dated 17.04.1999 and 16.02.2000. He averred that, being the owner of the suit property, he wanted to develop a colony in the name & style of *Vaishali Nagar* on the suit land and accordingly, had applied for its conversion. However, the defendant/respondent no.2 - Municipal Council, Tonk, failed to issue the requisite *Pattas* in favor of the persons to whom the plots were allotted, and the defendants obstructed construction. The plaintiff thus sought relief of declaration and mandatory injunction.

3. The suit was contested by defendant No. 1 - Municipal Council, Tonk, who filed the written statement denying the fact that the plaintiff had purchased any *Abadi* land. Defendant No. 1 further asserted that the plaintiff had no right to develop/establish a colony as the Municipal Council, Tonk is the only Authority for approving town planning under the Municipal Act & Rules and no prior approval was obtained for the same; therefore, prayed for dismissal of the suit.

4. The defendants No.2 and 3 (appellants herein) filed a written statement contesting the claim. They asserted that the land in question is agricultural land and not *Abadi* land, and that the plaintiff/respondent has no right to develop a colony thereon. It further stated that the suit land remained recorded in the name of Municipal Council, Tonk, therefore, unless the mutation entries are cancelled and due permission is obtained, the plaintiff/respondent is not entitled to raise any construction. It was also stated that the suit property is situated near the *District Jail, Tonk*, and as per *Circular No. F1(3)2 HB/Group 2170* dated 09.11.1970 and letter of Inspector General of Prisons, Jaipur dated 03.01.1980, no residential building/structure can be constructed within 300 feet of the jail premises and its associated quarters. Accordingly, prayed for dismissal of the suit.

5. On the basis of the pleadings of the parties, the learned Trial Court has framed the following issues:

1. आया आराजियात 5160, 5161, 5162, 5163, 5164 कुल किता 5 कुल रकबा 4 बीघा 6 बिस्वा वाकै कस्बा गर्बी टोंक केवल आबादी के लिये है तथा वादी उक्त भूमि का एकमात्र मालिक, स्वामी एवं काबिज है ?
2. आया वादी प्रतिवादीगण द्वारा बिना अधिग्रहण की कार्यवाही के उक्त भूमि का अंकन प्रतिवादी संख्या 1 के नाम अंकित करवा दिया गया जो अवैधानिक होने से उक्त अंकन शून्य घोषित कराये जाने योग्य है ?
3. आया वादी प्रतिवादीगण को स्थायी निषेधाज्ञा एवं आज्ञापक व्यादेश से पाबन्द कराने का अधिकारी है ?
4. आया न्यायालय को वाद को सुनने का क्षेत्राधिकार प्राप्त नहीं है ?
5. आया वादी ने धारा 170 नगरपालिका अधिनियम के तहत कॉलोनी बसाने के लिये टाउन प्लानर से कोई स्वीकृति प्राप्त नहीं की है। इसलिये वाद वादी चलने योग्य नहीं है ?
6. आया विवादित भूमि वर्तमान में प्रतिवादी संख्या 1 के नाम रेकॉर्ड में अंकित है। उक्त अंकन को निरस्त नहीं करवा लिया जाता है तब तक वादी को उक्त भूमि पर कोई मालिकाना हक पैदा नहीं होता है ?
7. अनुतोष ?

6. To substantiate the averments made in the plaint, the plaintiff/respondent examined PW-1 *Mukesh Kumar*, PW-2 *Kaluram*, PW-3 *Vishnu Saini*, PW-4 *Ramlal*, PW-5 *Kalyanmal*, and produced forty-three (43) documents including Ex-1 (*Site Map/Naksha*), Ex-2 (*Land Records/Jamabandi Samvat 2020 to 2053*), Ex-3 (*Jamabandi No.2054 to 2057*), Ex-4 (*Jamabandi Samwat 2054 to 2057*), Ex-5 (*Copy of Trace Map 2028*), Ex-6 (*Copy of Settlement Trace*), Ex-7 (*Copy of Demarcation/Seemagyan*), Ex-8 (*Copy of Patta/Title Deed - Ratan Devi*), Ex-9 (*Copy of Patta - Omprakash*), Ex-10 (*Copy of Patta - Sita Ram Vaishnav*), Ex-11 (*Copy of Patta - Rajendra Prasad Sharma*), Ex-12 (*Copy of Patta - Premlata*), Ex-13 (*Copy of Patta - Babu Lal*), Ex-14 (*Copy of Patta - Shobha*), Ex-15 (*Copy of Patta - Ramlal*), Ex-16 (*Copy of Patta - Madan Singh*), Ex-17 (*Copy of Patta - Murlidhar*), Ex-18 (*Sale Deed - Rajendra Kumar*), Ex-19 (*Sale Deed - Mukesh Kumar*), Ex-25 to 30 (*Copies of Mutation/Namantakaran Records*), Ex-31 to 42 (*Photographs*), Ex-43 (*Copy of Judgment by District Judge, Tonk*),

7. In rebuttal, the defendants examined DW-1 *Kanhaiya Lal* and DW-2 *Rakesh Kumar Bhargava*.

8. After hearing arguments of the respective parties, the learned Trial Court, while holding that unless and until the revenue records are mutated/changed in the plaintiff's favour, the plaintiff cannot claim any right over the suit properties, dismissed the suit vide judgment and decree dated 12.01.2010.

9. Being aggrieved by the impugned judgment and decree dated 12.01.2010 passed by the learned Trial Court, the present

plaintiff/respondent no.1 preferred a Regular First Appeal No.53/2013. Along with the appeal, the appellant also filed an application under Order 41 Rule 27 of the CPC.

10. Upon examination of the pleadings and evidence, the learned Appellate Court while allowing application under Order 41 Rule 27 of the CPC, recognized the plaintiff as the absolute owner of the suit property. The learned Appellate Court further declared the mutation issued in favor of defendant no. 1 to be null and void as the land was neither acquired nor any compensation paid for the same, and the land was surrendered solely for the purpose of conversion and issuance of *Patta*. Accordingly, the learned Appellate Court directed the defendant no. 1 (*Nagar Parishad*) to accept the conversion charges and issue the lease deed in favor of the allottees without any delay. Furthermore, the defendants were permanently restrained from creating any obstruction to the construction activities initiated by the allottees of the land.

11. Consequently, the learned Appellate Court allowed the appeal and set aside the judgment and decree dated 12.01.2010 passed by the learned Trial Court.

12. Being aggrieved by which, the appellants have preferred the present civil second appeal.

13. The main contentions raised by the learned counsel for the appellants are that the learned Court below seriously erred in decreeing the suit and granting a decree for the conversion of land and permission to raise construction, particularly when the land in dispute is situated within 300 feet of the jail premises. Such

construction of residential buildings adjacent to the jail premises would seriously endanger the jail's management as well as the security and safety concern. Learned counsel also submitted that, under the proposed questions of law enumerated in the memo of appeal, the present civil second appeal may be allowed and the impugned judgments and decrees may be set aside.

14. *Per contra*, learned counsel for the plaintiff/respondents submitted that the learned Appellate Court considered the pleadings of the parties and rightly recognized the plaintiff/respondent no.1 as the owner of the suit property by virtue of the registered sale deeds dated 17.04.1999 and 16.02.2000. He further submits that the plaintiff/respondent no.1 has submitted the scheme for the construction of a residential colony in the office of the respondent no.2 - Municipal Council, Tonk and accordingly, the land was mutated in favour of respondent no.2. Since the conversion was not accorded, the present suit was filed. He also submits that the learned Appellate Court, after taking into consideration the facts and pleas, found that the alleged mutation was bad in law because neither the land was acquired nor any compensation was paid to the plaintiff/respondent. Therefore, the mutation order recorded in favour of respondent no.2 was declared null and void, and consequently, the learned Appellate Court rightly directed respondent No. 2 to accept the conversion fee and issue a lease deed in favour of the plaintiff/respondent, and not to obstruct the plot holders from raising construction on their respective lands. Therefore, the judgments and decrees passed by the learned

Appellate Court do not suffer from any legal infirmity or perversity warranting interference by this Court, and accordingly prayed for dismissal of the present Second Appeal.

15. Heard and considered the submissions made by learned counsel for the parties, and perused the material available on record.

16. From a bare perusal of the record, it is evident that the plaintiff/respondent is the owner of the suit property by virtue of the sale deeds dated 17.04.1999 and 16.01.2000. Since he wished to develop a colony over the said land under the name and style of '*Vaishali Nagar*', he submitted a scheme to respondent No.2 - Municipal Council, Tonk and for issuance of *Patta* in favour of the allottees, the land was mutated in favour of respondent No.2. However, respondent no.2, despite completion of all the formalities, has neither accepted the conversion charges nor issued the lease deeds in favour of the allottees. Therefore, the suit for declaration and permanent injunction was filed.

17. From a bare perusal of the record, it is also evident that the learned Appellate Court took cognizance of the fact that as per the evidence of *DW-1 Kanhaiya Lal*, few *Pattas* were issued considering the land to be *Abadi* land, further that the suit land was neither acquired nor any compensation was paid. Therefore, it cannot be said that declining of the conversion as well as the mutation is valid. Rather, the learned Appellate Court has rightly taken cognizance of the fact that, in terms of the relevant provisions, once a land is surrendered for the issuance of a *Patta*,

the conversion amount must be accepted, and thereafter, lease deeds must be issued in favour of the allottees albeit after in accordance with the relevant Rules and law. The learned Appellate Court also took into consideration that respondent no.2 has issued *Pattas* for certain plots mentioned in Exhibits 8 to 16, but not for the remaining plots. Therefore, the action of respondent no.2 was found to be improper and arbitrary.

18. From a bare perusal of the judgment and decree passed by the learned First Appellate Court, it is evident that once plaintiff/respondent No.1 was found to be the owner of the said land, effective directions were issued against the respondent no.2 - Municipal Council, Tonk, for accepting the conversion fees and issuing *Pattas*, as well as not to obstruct the plot owners from raising construction as per law. Thus, in view of the aforesaid directions, it is not clear as to how the present appellants (Jail Authority/Collector) are aggrieved by the impugned judgments and decrees, as the directions were issued against respondent no.2 - Municipal Council, Tonk, who did not wish to assail the judgment and decree dated 16.01.2018. Therefore, it cannot be said that the impugned judgments and decrees are bad in law. At most, the appellants can make a representation to respondent no.2 - Municipal Council, Tonk for necessary compliance with the notification dated 09.11.1970.

19. It is pertinent to mention here that during the course of the argument, learned counsel for the plaintiff/respondent submitted that during the pendency of the present appeal, a substantial

number of *Pattas* have already been issued and the land has already been allocated to various allottees and after taking due permission, they have constructed their houses and living peacefully. That the said submission is not seriously refuted by the learned counsel for the appellants.

20. Further, the question of law proposed in the second appeal falls are questions of fact and does not fall within the purview of the substantial questions of law.

21. 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 is the existence of a substantial question of law.

22. A second appeal can be filed 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.

23. 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.

24. In conspectus of the aforesaid facts and circumstances, this court is of the considered opinion that the findings of the learned Appellate Court are based on proper appreciation of oral and

1 AIR 2020 SC (4321)

documentary evidence. Hence, findings of the learned Appellate Court are found immaculate and infallible in the eye of law.

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

26. However, the appellants are always at liberty to file a representation before respondent no.2 - Municipal Council, Tonk, for necessary compliance with the notification dated 09.11.1970, if so advised.

27. The Stay Application No.3902/2018 and the other pending applications, if any, also stands disposed of.

(MANEESH SHARMA),J