

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



S.B. Civil Second Appeal No. 513/2025
CNR: RJHC020940192025 | URN: CSA / 817U / 2025

- 1 Surgyani Lal S/o Shri Gotharam, (Deceased During The Pendency Of The Appeal) Through Its Legal Heirs
- 1.1 Smt. Shakuntala Devi W/o Shri Surgyani Lal, Resident Of Mohalla Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 1.2 Ashok Kumar Meena S/o Shri Surgyani Lal, Resident Of Mohalla Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 1.3 Smt. Santosh Meena W/o Shri Shaitan Singh Meena, Resident Of Mohalla Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 1.4 Kanta Meena W/o Shri Ashok Kumar Meena, Resident Of Mohalla Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 1.5 Smt. Laltesh Meena W/o Shri Rajesh Kumar Meena, Resident Of Mohalla Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 1.6 Smt. Mamta Meena W/o Shri Shimbhudayal Meena, Resident Of Mohalla Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 1.7 Smt. Neetu Meena W/o Shri Nikhil Meena, Resident Of Mohalla Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)

----Appellants

Versus

- 1 Natthuram S/o Shri Hajarilal, Resident Of Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 2 Rajesh S/o Shri Hajarilal, Resident Of Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 3 Omprakash S/o Shri Rakesh, Resident Of Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 4 Dilip Kumar S/o Shri Rakesh, Resident Of Bas Shahidaan, Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 5 Kamli W/o Shri Nathuram, Resident Of Bas Shahidaan,

- Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 6 Keshar W/o Shri Rakesh, Resident Of Bas Shahidaan,
Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 7 Rajesh S/o Shri Nathuram, Resident Of Bas Shahidaan,
Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)
- 8 Siyaram S/o Shri Bhagirath, Resident Of Bas Shahidaan,
Village Narayanpur, Tehsil Thanagazi, District Alwar (Raj.)

-----Respondents

For Appellant(s) : Mr. Rajendra Prasad Agarwal
Mr. Rohan Agarwal

For Respondent(s) :

HON'BLE MR. JUSTICE MANEESH SHARMA
Order

27/07/2026

1. The present Second Appeal has been filed by the appellant assailing the judgment and decree dated 31.07.2025 passed by the learned District Judge, Alwar in Civil Appeal No. 48/2025 (48/2014) (39/2022) titled as '*Surgyani Lal through LRs v. Natthuram & Ors.*' whereby the appeal filed by the appellant was dismissed and affirmed the judgment and decree dated 11.12.2013 passed by the learned Civil Judge and Judicial Magistrate, Thanagaji, District Alwar in Civil Suit No. 71/2009 titled as '*Surgyani Lal through LRs v. Natthuram & Ors.*' wherein the suit for declaration and permanent injunction filed by the plaintiff/appellant was dismissed and the counter-claim of the defendant/respondent was partially decreed.

2. The facts germane to the present second appeal are that the plaintiff/appellant filed a suit for declaration and permanent injunction, asserting that he is the owner of the suit property described in para 1 of the plaint, measuring 45 × 60 feet, as shown in red colour in the site plan (Exhibit P1), together with a 15-feet-wide passage situated on its western side. It was further pleaded that the plaintiff's residential house

is constructed over the suit property and that a kitchen measuring 8×10 feet has been constructed on the southern side of the residential house. It was further stated that he has been in continuous possession and enjoyment thereof for the last 40-45 years. The plaintiff also alleged that the defendants/respondents intended to illegally and forcibly dispossess the plaintiff/appellant from the suit property. It was thus prayed that the suit be decreed and the defendants/respondents be restrained by way of a permanent injunction.

3. In response thereto, the defendants/respondents filed their written statement denying the averments made in the plaint. It was contended that the plaintiff/appellant is not the owner of the suit property; rather, the suit property is public land belonging to the *Panchayat Samiti*, upon which three rooms are already constructed. It was further asserted that the plaintiff had forcibly occupied the disputed land. A 15-feet wide pathway runs behind the plaintiff's property, which serves as access for the defendants/respondents to reach their residential premises and when the plaintiff commenced constructing an 8x10 feet kitchen encroaching upon the pathway land, the defendants protested. Lastly, it was contended that the plaintiff holds no title or right over the suit property. By way of a counter-claim, the defendants sought an injunction restraining the plaintiff from encroaching upon the suit land and removal of the encroachment so made.

4. The plaintiff examined himself i.e. *Surgyani* (PW 1), *Mukesh* (PW 2), *Dharmendra Kumar Meena* (PW 3), *Sultanram* (PW 4) and produced and exhibited seven documents marked as Exhibits P1 to P7.

5. In rebuttal thereto, the defendant examined himself i.e. *Natthuram* (DW 1), *Omkar* (DW 2), *Mukesh Kumar* (DW 3) and produced and exhibited four documents marked as Exhibits D1 to D4.

6. The learned Trial Court framed 4 issues, which are as follow:

1. आया वाद पत्र के चरण संख्या 1 में वर्णित जायदाद वादी के हक व आधिपत्य की बुजुर्गान के समय से चली आ रही है ?

वादी

2. आया प्रतिवादीपत्र के चरण संख्या 1 में वर्णित रास्ता विवादित के बाबत प्रतिवादीगण स्थायी निषेधाज्ञा की डिक्री पाने के अधिकारी है ?

वादी

3. आया प्रतिवादीपत्र के चरण संख्या 3 में वर्णित अवैध निर्माण को प्रतिवादीगण मिसमार कराने के अधिकारी है ?

प्रतिवादीगण

4. अनुतोष ?

7. The learned Trial Court, upon considering the pleadings and appreciating the evidence on record, partially decided Issue Nos. 1 and 2 in favor of the plaintiff and Issue No. 3 in favor of the defendants, thereby partially decreeing both the suit and the counter-claim. The learned Trial Court restrained the defendants from dispossessing the plaintiff from the land admeasuring 45 feet East-West and 50 feet North-South as delineated in the site map (Ex.1), except in accordance with due process of law. Further, the learned Trial Court directed the plaintiff by way of a mandatory injunction to remove the 8x10 feet kitchen constructed over the pathway land.

8. Aggrieved by the judgment and decree of the learned Trial Court to the extent of removal of the kitchen measuring 8x10 feet, the plaintiff preferred a First Appeal before the learned District Judge, Alwar. The learned Appellate Court, upon re-appreciation of the material on record, dismissed the appeal and affirmed the judgment and decree passed by the learned Trial Court.

8.1 Hence, the present second appeal.

9. Learned counsel for the appellant submits that the learned Courts below failed to consider the Commissioner's report in right and true manner. He further submits that the learned Courts below have not examined the evidence available on record in right and true perspective. He lastly submits that the present second appeal involve substantial questions of law and therefore may be admitted.

10. Heard learned counsel for the appellant and perused the material available on record.

11. From the record of the case, it transpires that the plaintiff instituted the present suit seeking declaration and permanent injunction in respect of the suit property, asserting that he is the owner and in peaceful possession over the disputed land measuring 45×60 feet, as delineated in red colour in the site plan (Exhibit-P1), along with a 15 feet wide alley located on its western side. It was pleaded that his residential house is constructed over the suit property and that an 8×10 feet kitchen situated on the southern side of his residential house. Whereas the defendants filed a counter claim disputing the plaintiff's rights, contending that the land is a government land belonging to the *Panchayat Samiti* and the land adjoining the 15 feet wide alley on the western side belongs to the defendants.

12. It is pertinent to note here that the challenge in the present second appeal is confined only to the findings recorded under Issue No. 3 regarding the direction to remove the kitchen constructed over the land measuring 8×10 feet.

13. From a bare perusal of the record, it is revealed that, the burden to establish ownership or lawful possession over the disputed portion measuring 8×10 feet was rested upon the plaintiff. While the plaintiff has established his settled possession over the residential portion measuring 40×50 feet, he has failed to adduce any cogent evidence to prove either his title or long-standing possession over the adjoining portion where the kitchen has been constructed.

14. Further, from the testimony of PW-2 (*Mukesh*), it is clearly established that a public water supply pipeline has been laid beneath the land over which the kitchen stands constructed and that the said pipeline has existed for nearly thirty (30) years.

15. Furthermore, the Commissioner's report dated 11.12.2009 unmistakably reveals that the kitchen measuring 8x10 feet is under construction over a public water supply line. These circumstances completely contradict the plaintiff's plea of long-standing possession over the said portion and leads to conclude that the construction is an encroachment upon public land.

16. In view of the foregoing discussion, this Court finds no infirmity in the concurrent findings recorded by the learned Courts below in relation to Issue No. 3. The appellant having failed to establish either title or lawful and continuous possession over the land measuring 8x10 feet, no interference is called for with the direction issued by the learned trial Court for removal of the unauthorized construction raised over the public pathway.

17. All the arguments advanced by the learned counsel for the appellants revolve around the merits of the case and are essentially pure questions of fact, which do not give rise to any substantial question of law.

18. It is trite law that the condition precedent for entertaining and deciding a second appeal being the existence of a substantial question of law.

19. A second appeal can be entertained 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.

20. In view of the 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.

21. Since no substantial question of law is made out, the impugned judgments and decrees passed by both the learned Courts below is hereby affirmed and in result thereof, the present civil second appeal being devoid of merits, is hereby dismissed with no order as to costs.

22. All pending applications, if any, shall stand disposed of.

(MANEESH SHARMA),J