



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



S.B. Civil Second Appeal No. 503/2024

1. Suresh Narayan Mathur son of Late Shri Nand Lal Mathur,
Now Deceased,
- 1/1. Smt. Manju Mathur Wife,
- 1/2. Shri Rajat Mathur @ Gaurav Mathur Son,
- 1/3. Shri Shubham Mathur Son,
2. Shri Anil Kumar Mathur son of late Shri Nand Lal Mathur.
All Resident of 193/38 Purani Mandi, Ajmer.

----Appellants

Versus

1. Shrimati Premlata Wife of Shri Jatan Lal Jain,
2. Shrimati Sunita Jain Wife of Shri Dalip Jain,
3. Shrimati Rekha Wife of Shri Vinay Kumar Lodha,
All the three daughters of Shri Dhanraj Jain, R/o Purani
Mandi, Ajmer
4. Shri Bhagchand, Son of Shri Dhanraj Jain
5. Shri Ashok Kumar Son of Shri Dhanraj Jain, now
deceased
- 5/1. Shri Dipanshu Son of Late Shri Ashok Jain Modi, Resident
of Mahavir Colony Ke Saamne, Pushkar Road, Ajmer
- 5/2. Shri Himanshu Son of Late Shri Ashok Jain Modi, Resident
of Mahavir Colony Ke Saamne, Pushkar Road, Ajmer
- 5/3. Shrimati Pritee Jain Wife of Late Shri Ashok Jain Modi,
Resident of Mahavir Colony Ke Saamne, Pushkar Road,
Ajmer
6. Shri Dilip Kumar Son of Shri Dhanraj Jain,
7. Shri Rajesh Kumar Son of Shri Dhanraj Jain,
Both resident of C/o Shri Dhanraj Jain Bahiwala, Purani
Mandi, Ajmer.

----Respondents

For Appellant(s) : Mr. R.K. Mathur, Sr. Adv. with
Mr. Deependra Yadav

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/appellants, against the judgment and decree dated 14.08.2024 passed in Civil Appeal No.56/2016 (115/07) (CIS No.854/2014) titled as '*Suresh Narayan Mathur & Anr. Vs. Smt. Premlata & Ors.*', whereby the learned Additional District Judge



No.4, Ajmer, whereby the appeal preferred by the plaintiff/appellants has been dismissed and the judgment dated 02.04.2007 passed in Civil Suit No.447/93 by the learned Civil Judge (Junior Division) and Judicial Magistrate, Ajmer City (West) has been affirmed. Consequently, the suit filed by the appellants for declaration and permanent injunction has been dismissed.

2. Brief facts giving rise to the present appeal are that the plaintiffs/appellants have filed a suit for declaration and permanent injunction while stating that one shop and roof thereupon were rented out to them @ Rs.29/- per month. Initially, the appellants' father and uncle, namely, Nandlal and Shivilal were tenants and after death of the Nandlal, the plaintiffs/appellants are carrying on the business as successors.

3. In the plaint, the plaintiffs/appellants have stated that though the roof of the shop is included in tenancy, but the defendant/respondents have created hindrance in peaceful use and occupation of the said roof, therefore they have sought a relief of declaration that roof is part of tenanted premises and injunction to the effect that the respondents may be restrained not to create any hindrance in peaceful occupation of the suit property i.e. roof of the shop and not to raise any construction thereupon.

4. In the said suit, after service of notice, the defendant/respondents (landlord) filed a reply refuting the averments made in the plaint and denying the fact that the roof of the shop was ever let out. It was averred that there is no independent access to the said roof and that the plaintiffs/appellants have no right, title or interest with regard to



the roof of the said shop, and accordingly prayed for dismissal of the suit.

5. Thereafter, the plaintiffs/appellants, filed a rejoinder to the said written statement, reiterating the averments made in the plaint and accordingly sought the reliefs as prayed for in the suit.

6. On the basis of the pleadings of the parties following issues were framed:

1. आया, वादीगण वादग्रस्त दुकान और सम्पूर्ण छत के अपने पिता व चाचा नन्दलाल व शिवलाल के उत्तराधिकारी होने के कारण विधि के प्रवर्तन के कारण किरायेदार है व पूर्व मकान मालिक द्वारा वाद परिसर में ऊपर की छत भी शामिल किरायेदारी में दी हुई थी ?
— वादी

2. आया, प्रतिवादीगण को किरायेशुदा छत पर कोई भी निर्माण करने या अवरोध उत्पन्न करने से रोकने की स्थाई निषेधाज्ञा वादी जारी करवाने के अधिकारी है ?
—वादी

3. आया, किरायेशुदा दुकान के साथ छत भी प्रतिवादी सं० 3 को बेचान की गई है और इस छत हेतु प्रतिवादी सं० 1 व 2 के साथ मिलकर कोई कॉमन रास्ता उपलब्ध नहीं है तथा पूर्व मकान मालिकान द्वारा वादीगण को छत की सुविधा से वंचित कर दिया था ?
—प्रतिवादीगण

4. अनुतोष ?

7. In order to substantiate the averments of the plaint, the plaintiffs/appellants examined *Anil Mathur* (PW-1) and produced documents Ex-1 to Ex.-5 (rent receipts).

8. Oppositely, the defendant/respondents in order to controvert the averments made in the plaint and the evidence so adduced, examined *Dilip Jain* (DW-1) and produced documents Ex.A-1 to Ex.A-37.

9. After hearing arguments of the parties, the learned Trial Court held that the alleged rent receipts (Ex.1 to Ex.5) do not inspire any confidence, more particularly in view of the receipts produced by the defendant/respondents (Ex.A-1 to Ex.A-34) which were issued prior to 1989, and held that the plaintiffs/appellants



have no right, title or interest with regard to roof of the shop and accordingly dismissed the suit.

10. Being aggrieved of the above judgment and decree, the plaintiffs/appellants preferred a regular first appeal, whereby the learned Appellate Court, while re-endorsing the findings recorded by the learned Trial Court, dismissed the appeal and confirmed the impugned judgment and decree passed by the learned Trial Court.

11. Being aggrieved by the concurrent findings recorded by both the learned courts below, the plaintiffs/appellants have preferred the present appeal.

12. Learned counsel for the plaintiffs/appellants submits that both the learned Courts below seriously erred in dismissing the suit while misinterpreting the rent receipts produced by them (Ex.1 to Ex.5), which include the roof in the rented premises. He also submits that misreading of the rent receipts (Ex.1 to Ex.5) is a substantial question of law.

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

14. From a bare perusal of the record, it is evident that there is no dispute about the fact that the shop was let out to the plaintiffs/appellants. However, the main dispute between the parties is with respect to tenancy rights over the roof and accordingly the plaintiffs/appellants claim right on the basis of few rent receipts (Ex.1 to Ex.5) which were issued by the agent of the defendant/respondants - landlord i.e. *Mahender* and to counter the said evidence the landlord produced rent receipts issued prior to 1989 (Ex.A-1 to 34), wherein the rent receipts does not specify



the fact that the roof of the shop was ever let out or was part of the tenancy.

15. The rent receipts so produced by the plaintiffs/appellants relate to 1989-1990 and there is an evidence available on record that the agent of the defendant/respondants - landlord i.e. *Mahender* mistakenly added word '*Chhat*' in the rent receipts, whereas the aforesaid roof was never let out to the plaintiffs/appellants (tenant). Therefore, in the absence of any documentary or oral evidence proving that the roof in question is a part of tenanted premises, both the learned Courts below have rightly held that the plaintiffs/appellants have failed to prove the fact that the roof was ever let out to the plaintiffs/appellants. On the contrary, the landlord has produced rent receipts (Ex.A-1 to 34), wherein it is evident that only shop was let out to the appellant.

16. From a bare perusal of the judgments and decrees passed by the learned Courts below, it is evident that both the learned Courts below have considered the pleadings and evidence led by the parties in detail and found that the plaintiff/appellant - *Suresh Narayan* (PW1) in his cross-examination has deposed the following:

“.....किराये शुदा दुकान के अलावा उसकी छत मेरी किरायेदारी में है इसकी लिखावट मेरे पास है जो मैं दिखा सकता हूं।.....”

However, he failed to produce any documentary evidence to establish that the roof in question was a part of the tenanted premises and it is not a case of the plaintiff/appellant that at the first instance the shop was let out and thereafter the roof was also let out to him. Furthermore, it is also pertinent to mention here



that there is no separate way for the said roof, thus, the learned Courts below rightly dismissed the suit filed by the plaintiffs/appellants.

17. Further the alleged question of law so proposed by the learned counsel for the plaintiffs/appellants is a question of fact, as per the evidence available on record, it is established that due to mere inadvertence in few rent receipts where the agent of the defendant/respondents - landlord has mistakenly mentioned the roof, that *ipso facto* will not create any right of tenancy, more particularly when all previous rent receipts produced by the defendant/respondents (Ex.A-1 to 34) clearly indicate that only the shop was let out to the appellant meaning thereby the roof was never intended to be a part of the tenanted premises and the plaintiff/appellant has not disputed those rent receipts. Moreover, there is no separate way for the roof and the plaintiff/appellant in his cross-examination has mentioned that the roof is included in the tenanted premises and he can show document in this regard, but failed to produce the same, therefore, it is *prima facie* evident that he has withheld the said vital evidence (if any), thus, there is no substantial question of law is involved in the present civil second appeal.

18. 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.

19. A second appeal is entertainable only 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.

20. In view 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.

21. 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.

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

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

(MANEESH SHARMA),J