HIGH Court OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 86/2012
CNR: RJHC020010032012 | URN: CFA / 116U / 2012

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1. State of RajasthanThrough Chief Secretary, Secretariat, Jaipur
2. Jaipur Development Authority, Jawahar Lal Nahru Marg, Jaipur

----Appellants/Defendants

Versus

1. Brigadier Maharaja Sawai Bhawani Singh S/o Late Shri Maharaja Sawai Mansingh Bahadur, aged about 71 years, resident of City Palace, Jaipur (**died during the pendency of suit)**

1/1 H.S. Maharaja Sawai Padamnath Singh S/o Late Shri Maharaja Sawai Bhawani Singh Ji aged about 13 years through Natural Guardian Mother Rajmata Padmini Devi resident of City Palace, Jaipur through power of attorney Thakur Narain Singh S/o Late Shri Thakur Man Singh, Resident of Siras House, Gangapole, Jaipur.

1/2 H.S. Rajmata Padmini Devi W/o Late Shri Maharaja Sawai Bhawani Singh, aged about 68 years resident of City Palace, Jaipur through power of attorney Thakur Narain Singh S/o Late Shri Thakur Man Singh, Resident of Siras House, Gangapole, Jaipur.

1/3 Princess Diya Kumari D/o Late Shri Maharaja Sawai Bhawani Singh W/o Maharaj Narendra Singh, aged about 40 years, resident of City Palace, Jaipur Through Power of Attorney Thakur Narain Singh S/o Late Shri Thakur Man Singh, Resident of Siras House, Gangapole, Jaipur.

----Respondents/Plaintiffs

For Appellant(s) : Mr. Vigyan Shah, AAG with
Mr. Sankalp Vijay
Mr. Yash Joshi
Mr. Deepak Mittal
Mr. Pulkit Bharadwaj
Mr. Rohit Tiwari

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Ms. Anjali Choudhary
Ms. Tanisha Pant
Ms. Monisha Agarwal
Ms. Sanskriti Shrimali and
Ms. Richa Khandal

For Respondent(s) : Mr. Ramesh Chandra Sharma
Ms. Prishaa Singh Sisodiya
Mr. Hitarth Dixit
Mr. Jaideep Singh
Ms. Mahima Singh
Mr. Tushar Singh
Mr. Avi Maheshwari

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HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Judgment

Reportable

06/11/2026

1. In case of **JDA & Anr. Vs. Sawai Bhawani Singh & Ors. : Civil Appeal No. 208/2026 (SLP(c) 36560/2025)**, Hon'ble Supreme Court on 09.01.2026 has directed the High Court to dispose of current first appeal within a period of four weeks. The observations are reproduced as under:

> 9. In the peculiar facts and circumstances of this case and without going into the merits of the matter, we set aside the order dated 15-9-2025 passed by the High Court and restore the appeal to its original file.
>
> 10. Let the appeal be now taken up for hearing by the High Court and the same be disposed of within a period of four weeks from today without fail.
>
> 11. We are of the view that this matter should not have travelled up to the highest Court of this country. It is the laxity on the part of the appellants that the other side has been dragged all the way to the Supreme Court.
>
> 12. In such circumstances, referred to above, we direct the appellants to deposit an amount of Rs.50,000/- (Rupees Fifty Thousand Only) with the Supreme Court Middle Income Legal Aid Society within a period of two weeks from today. If the Respondent No.4 wants to file any counter affidavit before the High Court, he may do so at the earliest.

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Introduction

2. The instant Civil First Appeal has been filed by the appellants-defendants, aggrieved from the judgment and decree dated 24.11.2011 passed by the Learned Additional District Judge, (Fast Track) No. 5, Jaipur Metro, in Civil Suit No. 155/2005 (140/2002) (895/2002), whereby the trial Court has allowed the civil suit filed by plaintiff-Brigadier Maharaja Sawai Bhawani Singh (since deceased), through legal heirs. The Trial Court has passed following decree:-

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> 30. अतः वादीगण का वाद विरूद्ध प्रतिवादीगण, प्रतिवादी संख्या–1 के विरूद्ध एकतरफा निम्नप्रकार डिक्री किया जाता है किः–
> (1) वादीगण विवादग्रस्त सम्पत्ति के एकमात्र स्वत्वाधिकारी है तथा कोवीनेन्ट के बमुकाबले राजस्व रिकॉर्ड के इन्द्राज शून्य घोषित किये जाते हैं।
> (2) विवादित सम्पत्ति का कोवीनेन्ट के मुताबिक वादीगण को एकमात्र स्वत्धारी एवं स्वामी घोषित करते हुए प्रतिवादीगण को जरिये स्थायी निषेधाज्ञा पाबन्द किया जाता है कि वे विवादित सम्पत्ति के उपयोग–उपभोग में वादीगण को किसीप्रकार की बाधा स्वयं के अथवा अपने अधीनस्थ कर्मचारी के मार्फत पैदा न करें तथा विवादित सम्पत्ति के संलग्न नक्शों में लाल रंग से दर्शित अनाधिकृत बाउण्ड्रीवॉल को अपने खर्चे से ध्वस्त करवाकर अपना कब्जा तुरन्त हटावें तथा वादीगणकों उक्त सम्पत्ति के उपयोग–उपभोग एवं कब्जे में किसी प्रकार की मजाहमत कारित न करें। वाद व्यव उभय पक्ष अपना–अपना स्वयं वहन करेंगे। नियमानुसार डिक्री पर्चा बनाया जावे।

3. By this order, we are also deciding Application No. 23147/2016 and Application No. 3/2026, both filed under Order 41 Rule 27 of the CPC. As per settled law, application under Order 41 Rule 27 of CPC can be considered at the time of final adjudication. The appellants have also filed Application No. 4/2026 under Order 41 Rule 25 of the CPC for framing additional issue. We are also deciding this application along with the aforesaid two applications.

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4. Before considering the arguments and submissions advanced by the learned counsel for the parties, it would be appropriate to refer to the relief clause of the plaint, which reads as under:-

> (ए) वाद वादीगण विरूद्ध प्रतिवादीगण डिक्री किया जाकर यह घोषित किया जावें कि विादित सम्पत्ति जिसको दावे के साथ संलग्न नक्शे में पीले, लाल एवं हरे रंग से दर्शाई सम्पत्तियों के रेवेन्यू रेकार्ड में वादीगण के स्थान पर अन्य नाम से ही रखी समस्त ऐन्ट्रियां कोवीनेंट एवं उसके साथ संलग्न नक्शे के मुकाबले शून्य और अवैध है और विवादित सम्पत्ति का वादी ही कोवीनेंट के अनुसार एक मात्र स्वत्वाधारी एवं स्वामी है।
> (बी) यहकि प्रतिवादी संख्या 1 के खिलाफ इस आशय की आदेशात्मक निषेधाज्ञा जारी की जावे कि वह विवादित सम्पत्ति के बाबत रेवेन्यू रेकार्ड में वादी के स्थान पर अन्य नाम से ही रखी ऐन्ट्रियों को निरस्त कर उनके स्थान पर वादी का नाम अंकित करें।
> (सी) यहकि प्रतिवादी संख्या 2 के खिलाफ आदेशात्मक निषेधाज्ञा जारी फरमाकर आदेशित किया जावें कि वादी के स्वामित्व की सम्पत्ति, जिसको संलग्न नक्शे में लाल रंग से दर्शाया गया है, पर बनाई अनाधिकृत बाउण्ड्रीवाल को अपने खर्चे से ध्वस्त करवाकर उस पर से अपना कब्जा तुरंत हटावें एवं वादीगण को पूर्व की भांति सम्पत्ति के उपयोग एवं उपभोग किये जाने में किसी प्रकार की बाधा पैदा न करें और न करावें।
> (डी) यहकि प्रतिवादीगण को जरिये स्थाई निषेधाज्ञा से पाबंद किया जावें कि वह स्वयं उनके अधीनस्थ कर्मचारी विवादित सम्पत्ति, जिसको संलग्न नक्शे में पीले, हरे व लाल रंग से दर्शाई गई है, के वादीगण एवं उसकी पुत्री दिया कुमारी व जयपुर पेलेस होटल लि0 के द्वारा उपयोग व उपभोग व नियमानुसार निर्माण इत्यादि कार्य किये जाने में किसी प्रकार की बाधा पैदा न करें और न कराऐं और न ही उक्त विवादित सम्पत्तियों को तथाकथित रेवेन्यू ऐन्ट्रियों को आधार बनाकर किसी को किसी प्रकार से अंतरित करें और न करावें।
> (ई) यहकि खर्चा मुकदमा प्रतिवादीगण से वादीगण को दिलवाया जावें।
> (एफ) अन्य सहायता जो माननीय न्यायालय वादीगण के हक में उचित समझे दिलवाने की कृपा करें।

Facts of the Case:-

5. The brief facts of the case are that the plaintiff Brigadier Maharaja Sawai Bhawani Singh (died during the pendency of the

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civil suit), filed a civil suit for declaration, correction of entries in revenue record with the averment that plaintiff is having property owned and in possession bearing Khasra Nos. 172, 180, 183, 184, 185, 186, 187, 190, 191, 193, 195, 227, 229 and 230, situated in Village Harthroi, District and Tehsil Jaipur. The said land comprises properties including palace, bungalows, outhouses, cemetery, etc., and the remaining land is open and used for residential purposes. The plaintiff annexed a map in support of his plaint and marked the aforesaid properties in yellow colour. The plaintiff has further averred that his father Maharaja Man Singh, was the ruler of Jaipur and that all the properties mentioned by the plaintiff belonged to him. After the merger of Rajasthan with the Government of India in 1949, a Covenant was executed between late Shri Maharaja Man Singh and the Government of India (GOI), and in the said covenant under the list of personal properties, Khasra Nos. 172, 180, 198, 227, 229 and 230, which were earlier known as '*Manji Ka Bagh*', thereafter as Residency and subsequently as 'Princess House', along with outhouses, vacant land, etc., and the famous Raj Mahal Palace, were shown as the personal properties of late Maharaja Man Singh. The plaint further mentioned that the personal properties were shown within the red-line areas in the Covenant and, according to the Covenant, the said properties were received by late Maharaja Man Singh as his personal properties and all were transferred to the plaintiff by late Maharaja Man Singh through a registered gift deed dated 11.02.1957, duly registered in the office of the Sub-Registrar, Jaipur.

6. The plaintiff further averred that after death of Maharaja Man Singh, a notification dated 12.07.1970 was published in Part II of

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the Gazette of India, whereby the then President of India accorded the status of Ruler of Jaipur to the plaintiff as his successor. The plaintiff further averred that his employees were using the properties, and certain particulars of such use have also been mentioned by the plaintiff. The plaintiff further averred that a part of the property was gifted by him to Raj Kumari Ms. Diya Kumari on her birthday, i.e., 31.01.1972, by way of a gift deed, and the same was shown in green colour in the subsequent map. The plaintiff further averred that the then Urban Improvement Trust (UIT) [now Jaipur Development Authority, (JDA)], initiated acquisition proceedings in respect of part of the said land, treating the plaintiff as the owner of the property. The Land Acquisition Officer (LAO) passed an award in 1993, and plaintiff has filed a reference against the said award.While placing reliance upon the terms of the covenant, an admissible document, the plaintiff stated that the covenant could not be questioned by anyone.

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7. The plaintiff further averred that it was the duty of the defendants to correct the entries in the revenue record, however, same were not corrected in accordance with covenant. As per plaint, when it came to the notice of the plaintiff that the revenue record had not been corrected in terms of the covenant, the plaintiff has sent a communication to the then Chief Minister of Rajasthan in 1995. The matter was enquired, and the Collector vide letter dated 03.06.1996, has responded in favour of the plaintiff, and suggested filing of a suit for correction of entries.. The plaintiff has further averred that for correction of the entries, a revenue suit has been filed on 08.10.1997, but same was returned on the ground that land is Abadi land. The plaintiff has further averred that the JDA had illegally constructed a boundary

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wall over the properties mentioned by him, and the plaintiff served a notice under Section 80 of the CPC and Section 79 of the JDA Act, seeking correction of the revenue entries and restoration of possession over the property belonging to the plainitff.

8. The plaintiff further averred that another property commonly known as "Nathaniyo Ka Bagh" now known as "Jai Mahal Palace" was also in dispute with similar nature and after a judgment of Hon'ble High Court the property was treated to be private property of the plaintiff, in terms of covenant. The plaint further mentioned that the revenue suit filed by the plaintiff was returned on the ground that the land in question is Abadi land and the Revenue Court has no jurisdiction to adjudicate the matter. After return of plaint the current suit has been filed by the plaintiff. The plaintiff has prayed for correction of revenue entries and declaring the revenue entries as illegal in comparison to Covenant. Further, the mandatory injunction to demolish the boundary wall of the defendant and handing over of the possession to the plaintiff, and prohibitory injunction.

9. The appellant No.1/defendant No. 1, (State of Rajasthan) remained ex-parte and chosen not to file any written statement. The present appeal has been filed by both the appellants. Learned AAG has argued the matter on behalf of both the appellants, meaning thereby that appellant No. 1 and appellant No. 2 have advanced their arguments on common grounds.

10. Defendant No. 2/appellant No. 2 has filed a written statement and pleaded that the entire land has been entered in revenue record as revenue land in the name of defendant No. 2. It has further been pleaded that the gift deed executed in favour of Raj Kumari Ms. Diya Kumari pertains to Government land. The

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contentions raised by the plaintiff have been denied by defendant No. 2 and further pleaded that the suit filed by the plaintiff is self-contradictory, as by payment of tax another dues on any building, the plaintiff does not acquire any right or title. Defendant No. 2 has further pleaded that, by way of the gift deed prepared in 1957, no right accrued to the plaintiff, as Swai Man Singh was not the owner of the property. The defendant No. 2 has pleaded that the entire land is in its possession and has denied all the averments made and claims raised by the plaintiff. The Defendant No. 2 has reiterated that the land in question is an agricultural land and that only the jurisdiction vests in the Revenue Court. The Defendant No. 2 has admitted the land acquisition proceedings and further reference under the Land Acquisition Act.

11. It has further been pleaded by defendant No.2 that the land records were prepared after the settlement of land records, but the same has never been challenged and have attained finality. The defendant No.2 further pleaded that in Khasra No. 186 there were some structures and the possession of the plaintiff is just a licencee. An objection about limitation has been raised and pleaded that the suit is barred by limitation and a proper Court fee has not been paid.

12. On the basis of pleading of plaintiff and defendant No.2 following issues were framed by the Trial Court:-

> 1. आया विवादित सम्पत्ति जिसका वर्णन वाद पत्र की मद सं0 1, में किया गया है और दावे के साथ संलग्न नक्शों में पीले रंग, लाल व हरे रंगसे दर्शायी है का वादी ही कोवीनेन्ट एवं उनके साथ संलग्न नक्शों के अनुसार एक मात्र स्वत्वाधिकारी एवं स्वामी है और उक्त सम्पत्तियों बाबत रेवेन्यू रेकार्ड में वादी के बजाय अन्य के नाम से हो रखी एन्ट्रियां कोवीनेन्ट के मुकाबले शुन्य और अवैध है और वादी उक्त तथाकथित एन्ट्रियों को निरस्त करवाकर अपना नाम अंकित करवाने का अधिकारी है।

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2. आया वादी प्रतिवादी नम्बर–2 के द्वारा वाद के, स्वामित्व की सम्पत्ति जिसको संलग्न नक्शा–दावे में लाल रंग से दर्शाया गया है, पर अनाधिकृत रूप से बनवाई बाउण्डरी बाल को वादी जरिये आदेशात्मक निषेधाज्ञा से प्रतिवादी के खर्चे से तुडवाकर उक्त सम्पत्ति का उपयोग व उपभोग करने का अधिकारी है।

–वादी,

3. आया वादी विवादित सम्पत्ति स्वयं उसकी पुत्री दीया कुमारी एवं जयपुर पैलेस होटल उपयोग व उपभोग में लेने उसमें नियमानुसार निर्माण करवाने का अधिकारी है और वादी इस बाबत प्रतिवादीगण से खिलाफ स्थायी निषेधाज्ञा करवाने का अधिकारी है।

–वादी,

4. आया विवादित सम्पत्ति कृषि भूमि है। इस कारण दीवानी न्यायालय को दावा सुनने को अधिकार नहीं है।

–प्रतिवादी,

5. आया वादी ने कम न्याय शुल्क पेश किया है। इस कारण वादी का दावा कमी रसूम के आधार पर निरस्त किये जाने योग्य है।

–प्रतिवादी,

6. आया वादी का दावा मियाद बाहर होने के कारण निरस्त किये जाने योग्य है।

–प्रतिवादी,

7. आया वादी विवादित सम्पत्ति पर बतौर लाईसेंसी काबिज है यदि ऐसा है तो इसका दावे पर क्या असर है।

–प्रतिवादी,

8. अनुतोष।

13. The plaintiffs examined PW-1 Narender Singh, PW-2 Pratap Singh Nathawat and PW-3 Narayan Singh and exhibited 84 documents in support of their case, whereas the defendants examined DW-1 Mahender Kumar Khichi and DW-2 Navratan Kohli and exhibited documents A-1 to A-4 in support of their case. Issue Nos. 1 and 2 were decided in favour of the plaintiff, whereas Issue Nos. 4 to 7 were decided against the defendants. Ultimately, a decree was passed in favour of the plaintiff.

Submissions on behalf of appellants:-

14. Learned AAG firstly referred Article 363 of the Constitution of India and submitted that no Court can enter into any controversy relating to interpretation of any Covenant, as in the instant case,

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the plaintiff has specifically mentioned about the Covenant and sought a relief of declaration in respect of a civil matter touching the interpretation and identification of property mentioned in the covenant. He also referred the provision of Article 363 and submitted that a suit is not maintainable and filing of a civil suit is contrary to all settled principles of law. He also submitted that the Civil Court has committed serious and gross error by usurping jurisdiction in entering into a field which has already been prohibited under the law. He referred para 3 and 9 of the plaint and submitted that the contour of the plaint is sufficient to draw a conclusion that the suit has been filed only in relation to demarcation and declaration of property and further establishing a right in grab of the covenant, which is not permissible. He also referred Article XII of the Covenant and submitted that if there is any issue about interpretation of covenant, then the plaintiff is not entitled to file a civil suit in trial Court and seek a declaratory relief against the appellants. He also submitted that the entire prayer clause clearly indicate that civil suit revolves around the Covenant and the plaintiff has claimed interpretation and identification of a property, and said civil suit is barred by law and the trial Court has committed a serious error of jurisdiction and also of law while allowing the civil suit of the respondents/plaintiff.

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15. Learned AAG has submitted that the Covenant has to be read in the same manner as it has been mentioned in the Covenant, and neither of the parties to the Covenant can challenge anything related to the Covenant. He submitted that Article 363 of the Constitution begins with a non-obstante clause, and no party to the Covenant can invoke the jurisdiction of any Court. He also referred the prayer of the plaintiff and submitted

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that the declaration of a property to be private property contrary to the Covenant is not permissible. He also referred the maps and the documents as relied by the plaintiff and submitted that all these documents are non-admissible as neither they were admitted nor have been proved. He also referred the land acquisition proceedings culminated into separate awards dated 19.10.1993 and 20.10.1995, and submitted that the land in question belongs to the Government, and the plaintiff has not challenged the orders passed by the Land Acquisition Officer (LAO). He also submitted that the award dated 20.10.1995 demostrate that the property in question is a Government property and the plaintiff is not entitled for any compensation. He also submitted that the non-challenge to the award dated 20.10.1995 amounts to the finalization of adjudication against the plaintiff.

16. Learned AAG has further referred the Exhibit A-4, letter dated 28.09.1984 sent by the original plaintiff to the appellant No. 2, wherein he admitted that the Princess House is located at No. 7, Civil Lines, and Rajmahal is not included in the Covenant as private property. He also submitted that the trial Court, without any justifiable reason, has not believed the letter, which is admission of plaintiff. He also submitted that it was the duty of the trial Court to exercise authority under Section 45 read with Section 73 of the Indian Evidence Act to clear the doubt and ambiguity in case the signature of the plaintiff were denied. He also submitted that the plaintiff himself has not appeared in the evidence box, and on the basis of power of attorney the evidence has been filed on record. He further referred the process adopted by the trial Court in rejecting the Exhibit A-4 and submitted that

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the signatures of Brigadier Bhawani Singh were available on other documents such as Ex. 69/1, 75, and 77; but the non-exercise of authority by the trial Court is a clear case of perversity. He also submitted that Exhibit A-4 is an admission against the plaintiff, and no party can take advantage against his admission.

17. Learned AAG has further referred Exhibits 82 and 83, information received under the RTI Act, and submitted that same has not been proved in accordance with law. He also submitted that the plaintiff himself has not received any information under the RTI Act; rather, the admission of PW-1 Narendra Singh clearly admitted that Exhibit 83, which is a map alleged to have been annexed with the Covenant, does not bear the signature of any. He also submitted that the original map of the Covenant has not been produced before the trial Court so as to prove the dispute as private property of the plaintiff, and in the absence of evidence, the trial Court is not justified in deciding issue Nos. 1 and 2 in favour of the plaintiff, particularly when raising a dispute in the civil Court is barred by law.

18. Learned AAG has further referred to the judgment in the case of ***Jagat Singh v. Jaipur Development Authority, Civil Second Appeal No. 12/1987, decided on 07.09.1988*** by a coordinate Bench of this Court, and submitted that whether there exists a real dispute or an illusory dispute regarding the identification of Princess House as Rajmahal or vice versa is a dispute of fact and requires interpretation of the Covenant. Article 363 of the Constitution clearly bars the jurisdiction of the civil Court. He also submitted that in another case, ***State of Rajasthan v. Tej Singh Ji, Maharaja of Alwar, AIR 1969 Raj 52***, as well, the issue was considered with regard to Article 363.

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He submitted that this Hon'ble Court has to decide whether it is a real dispute or an illusory dispute, and examination of a real dispute with reference to Article 363 is barred under the law. He also submitted that the entire material placed on record clearly indicates that the land in question is *Siwai Chak* land and such land belongs to the State. He referred the facts narrated by the plaintiff in his plaint and submitted that the declaration sought by the plaintiff is contrary to the Covenant and the law. He also submitted that all the evidence in this regard, including that of PW-1, is not sufficient to establish right and tittle of the plaintiff.

19. Learned AAG has further referred Article 58 of the Limitation Act and submitted that the cause of action, if any, arose in 1949 upon the execution of the Covenant, or at the most, arose in 1958 when the revenue settlement was undertaken, but not in 2002. He also submitted that all the entries were of 1958 or even prior to the settlement, as these properties belonged to the erstwhile Jaipur State and taking advantage of possession of the building and adjoining open land, the plaintiff has claimed ownership and filed a suit after a substantial delay. He further referred the doctrine of acquiescence, delay and laches, waiver, and estoppel in support of his argument, and submitted that the suit is hopelessly barred by the law, and the trial Court has not considered the grounds as referred by the appellants-defendants. He also submitted that the cause of action is not a continuous cause of action; rather, the plaintiffs have filed a suit after a substantial delay, and the same is barred by law of limitation.

20. Learned AAG has further referred the locus of the plaintiff in challenging the entries and submitted that the plaintiff has filed a suit with an averment in paragraph No. 4 that a gift deed was

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executed by Maharaja Man Singh in favor of the original plaintiff, Maharaja Bhawani Singh. He also referred paragraph No. 6 and submitted that a part of the property had already been gifted, and does not remain with plaintiff. He further referred the material and submitted that the properties have been in the name of the Government since the pre-Independence era and are used by the Government Department as Government. He also submitted that no objection whatsoever had been raised by Maharaja Man Singh at the time of execution of Covenant, and the Covenant attained finality; therefore, the plaintiff has no locus to file a civil suit. He also submitted that a clever drafting to grab the land surrounding Rajmahal does not give any right to the plaintiff to file a suit.

21. Learned AAG has further referred the Covenant and submitted that earlier, due to connivance of the officials of appellants, an award has been passed with regard to part of the land presuming the plaintiff to be a landholder, but same cannot be a precedent against the Government, as the land in question belongs to the Government and the Government can take control of the land at any point of time. He also referred judgment in case of **JDA Vs. Mahesh Sharma & Ors. : (2010) 9 SCC 782** and submitted that once the land belongs to the Government, there is no need for the Government to acquire it or pass any award under the Land Acquisition Act. He also referred the buildings and structures in Khasra No. 186 and submitted that the plaintiff is licensees and not entitled to continue in possession. He also submitted that the case of the plaintiff is that the building and structure in Khasra No. 186 were initially known as Manji Ka Bagh, later as Princess House, and lately as Rajmahal Palace. He also submitted that all these facts and claims are false, as Princess

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House is a bungalow situated in Civil Lines; however, taking advantage of non-action and connivance with Government officials, the plaintiff has claimed the residency or Rajmahal as Princess House. He also submitted that neither of the properties, including Rajmahal, has been listed as private property in the Covenant, and the same has been proved from the admission of the plaintiff vide letter Exhibit A-4.

22. Learned AAG has He also referred the cross-examination of PW-1 and submitted that the evidence of PW-1 clearly indicate that he is not aware about the facts averred in the plaint and he also submitted that the cross-examination clearly indicate that no proceedings were initiated against the last order passed in land acquisition proceedings. He also submitted that the evidence of the plaintiff is not sufficient to draw any conclusion in favour of the plaintiff and the trial Court has committed a serious error in not reading the evidence of PW-1 in the correct perspective. He also submitted that the non-grant of compensation in second land acquisition proceeding has not been challenged by the plaintiff or his legal representatives, and the same is sufficient to discard and discredit the case of the plaintiff and the trial Court has not taken the same as an important fact in the instant case. He also submitted that all relevant material has been placed on record with an application under Order 41 Rule 27 CPC.

23. Learned AAG has also submitted that neither the original covenant nor communications pursuant to the Covenant are produced, nor any of the original maps attached with the Covenant are produced to show the signature of the executant at the time of the Covenant, but the trial Court has placed reliance upon documents which were not duly proved, or collusive in

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nature, is a perversity and illegality in deciding current civil case. He also referred the findings on issue No. 6 and submitted that the findings are cryptic in nature and the trial Court has failed to discharge its duty in deciding the issue.

24. Learned AAG has further referred the application under Order XLI Rule 27 of the CPC submitted by them along with certain documents, including notice, notification, letter, and award, and submitted that all these are public documents and they are being produced from proper custody and possession. He also submitted that due to negligence of the then officials working in the appellants, these documents could not be filed and tendered in the evidence before the trial Court. He also submitted that the purpose of Order XLI Rule 27 of the CPC is to properly adjudicate a dispute between the parties in an effective and justifiable manner, and these documents are necessary for a just decision of the case. He also submitted that the suit of the plaintiff is ill-conceived and they have concealed material facts, therefore, it is necessary for the appellants to bring all these documents on record, and by way of the application, these additional documents were filed by them.

25. Learned AAG has further referred the Application No. 4/2026 under Order XLI Rule 25 of the CPC and submitted that the judgment passed by this Court has been placed on record for framing an additional issue, as the issue relating to Article 363 has been considered by this Court in a detailed manner. He also submitted that the constitutional prohibition cannot be circumvented merely by framing the proceedings of a suit as a declaratory suit for declaration of a certain khasra as private property, based upon the claim under the Covenant. He also

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submitted that at the most, after taking additional documents on record, the matter be decided finally.

26. Learned AAG has placed reliance upon the judgment in the case of ***State of M.P. v. Usha Devi, reported in (2015) 8 SCC 672; Draupadi Devi v. Union of India, reported in (2004) 11 SCC 425***; ***Karan Singh v. State of J&K, reported in (2004) 5 SCC 698***; and ***Sawai Tej Singhji v. Union of India, reported in (1979) 1 SCC 512***; and submitted that a dispute with regard to any particular property, whether the same has been recognized as private property in the Covenant, is a dispute arising out of the terms of the covenant and the same cannot be adjudicated by a civil Court as being barred under Article 363 of the Constitution of India. He also placed reliance upon the judgment of this Court in the case of ***Rajmata Krishna Kumari v. State of Rajasthan & Ors., D.B. Civil Special Appeal No. 404/1994 (Raj.)***, and ***State of Rajasthan & Anr. v. Maharaja Sawai Man Singh II Museum Trust, City Palace, Jaipur, S.B. Civil Revision Petition No. 70/2020 (Raj.)***.

27. Learned AAG has also placed reliance upon the judgment in the case of ***JDA v. Mahesh Sharma & Anr., reported in (2010) 9 SCC 782,*** and submitted that issuance of notification under Sections 4 and 6 of the Land Acquisition Act and the subsequent award for land acquisition of Government land is a nullity. In the instant case, the award dated 20.10.1995 clearly indicate that the land in question is Government land and no compensation is payable to anyone. He also submitted that if any award prior to the present proceedings has been passed, the same is a nullity and does not give any advantage to the plaintiffs.

28. Learned AAG has further placed reliance upon the judgment

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in the case of ***Pyarelal vs. Shubhendu Pilania (Minor) through legal guardian, reported in (2019) 3 SCC 692***, and submitted that a suit for correction of revenue entries is maintainable before the Revenue Courts and declaration as to khatedari rights falls within the exclusive jurisdiction of the Revenue Court. He referred to Section 207 of the Rajasthan Tenancy Act and submitted that the suit is barred under the law.

29. Learned AAG has placed reliance upon ***Khatri Hotels Private Limited & Anr. v. Union of India & Anr., reported in (2011) 9 SCC 126***, and submitted that a suit filed after a delay of 53 years is barred by limitation; therefore, the suit is not maintainable under the law. He also submitted that in the instant case, the plaintiff has filed a civil suit contrary to the entries in the Covenant and further revenue settlement of 1958, but on the basis of the said claim, the suit is hopelessly barred by the law of limitation; therefore, the suit is not maintainable and the trial Court has committed a serious error in passing a decree in favour of the plaintiff/respondents.

Submissions on behalf of respondents:-

30. The aforesaid contentions were opposed by the learned counsels appearing on behalf of the respondents and they have submitted that the plaintiff has instituted a revenue suit before the Sub-Divisional Officer, and after the return of the suit, the current civil suit has been filed before the Civil Court. He also submitted that the suit has been filed after serving a notice under Section 80 of the CPC to appellant No. 1 and Section 79 of the JDA Act to appellant No. 2. They also submitted that appellant No. 1 has chosen not to contest the civil suit, and an ex-parte proceeding has been directed against appellant No. 1 as neither the written

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statement nor the evidence has been filed by appellant No. 1. He also submitted that the arguments advanced by the AAG are contrary to the pleadings of appellant No. 2. He also submitted that appellant No. 2 has filed a written statement wherein, except ground for the limitation, he has not raised any objection about the non-maintainability of the suit or any other ground to defeat the rightful claim of the plaintiff. He also submitted that the appellants are the State, and they are being run in accordance with the law, but not with vengeance or in revengeful manner. He also submitted that the appellants have admitted in every previous proceeding that Raj Mahal is also known as Princess' House and the same belongs to the plaintiff. He further submitted that except for the arguments advanced by the AAG, there is no material to demonstrate that Raj Mahal is not the Princess House. He also submitted that the suit is not for demarcation, identification, or grabbing of any of the property; rather, the suit has been filed based upon rights under the Covenant and further wrongful action of the appellants. He also submitted that the plaintiff cannot be deprived of his personal property adopting highhandedness by the appellants.

31. Learned counsel for respondent(s) also submitted that this Court has to consider the dispute, as all disputes are not barred under Article 363 of the Constitution. He also submitted that the plaintiff has specifically mentioned each and every fact in its plaint, and the same has not been denied specifically by appellant-defendant No. 2 in their written statement, and in the absence of specific denial, the facts narrated by the plaintiff are deemed to be admitted. He also submitted that current first appeal has arisen from the proceedings before the civil Court, and the first appeal

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can only be decided within the parameters under Order XLI Rule 33 of the CPC and cannot be decided on basis of material not produced before the trial Court.

32. Learned counsel appearing on behalf of the respondents has submitted that the property in question was earlier known as 'Manji Ka Bagh' or 'Residency', and 'Princess House', but lately it has been known as 'Rajmahal'. He also submitted that there is no doubt about the fact that the property in question belongs to the plaintiff, however, the appellants have created a dispute by issuing orders contrary to law by taking advantage of entries in the revenue record. He also submitted that the entries in the revenue record have never been considered conclusive proof of title or ownership of any land; rather, they are entries for fiscal purposes. He further submitted that the father of plaintiff was in possession of suit property before execution of the Covenant and after the Covenant. He also submitted that at no point of time the appellants disputed any title or ownership of the plaintiff on said property. He also submitted that the facts narrated in the plaint are almost admitted by the appellants, and they cannot take a U-turn by raising arguments contrary to the pleadings. He also referred to the evidence on record and submitted that in the entire evidence, nothing has been mentioned which supports the argument of the learned Additional Advocate General (AAG), questioning the locus and right of the plaintiff in instituting the civil suit. He further referred the proceedings held so far and submitted that if the appellants failed to bring all these materials during the proceedings before the civil Court, they cannot take advantage of their weakness on the ground of negligence or connivance of the officers of the appellants. He also submitted

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that the appellants are not free to raise any argument in a free-style and are bound by the provisions of the law, as the plaintiff-respondents are also a subject entitled to the protection of the law.

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33. Learned counsel appearing on behalf of the respondents-plaintiff has further submitted that all the Khasra numbers mentioned in the plaint, measuring 120 bighas of land, remained in ownership and possession of the plaintiff not only before the Independence but also after the Independence. He also submitted that in 1972-73, the Urban Improvement Trust (UIT) acquired 65 bighas of land out of 120 bighas, and notifications for the Land Acquisition were issued, clearly indicating the plaintiff as the Khatedar. He also submitted that the said land acquisition proceedings were challenged up to the Hon'ble Supreme Court, and the right of the plaintiff was clearly upheld by the Hon'ble Supreme Court, therefore, the appellants are not at liberty to dispute the remaining 54 bighas and 18 biswas left after the land acquisition proceedings. He also submitted that pursuant to the land acquisition proceedings conducted by the UIT which was later converted into the Jaipur Development Authority (JDA) the mutation of the 65 bighas acquired by the UIT in 1972-73 was opened in the name of the JDA in 1993. He also submitted that appellant No. 2 can claim only the 65 bigha land acquired and for which possession was taken in 1993–1994. He also submitted that appellant No. 2 is not authorized to take possession of the remaining 54 bighas and 18 biswas of land, which does not belong to the JDA. He further submitted that if any dispute remains, it is between appellant No. 1 (State of Rajasthan) and the plaintiff, and not between appellant No. 2 (JDA) and the plaintiff.

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34. Learned counsel for respondent also submitted that appellant No. 1 has not filed any written statement challenging the title, claim, or entitlement of the plaintiff; and in the absence of such a challenge, appellant No. 1 is not free to question the findings recorded by the civil Court. He also submitted that the plaintiff served a notice under Section 79 of the JDA Act upon appellant No. 2, and no reply was given by appellant No. 2 to the said notice denying the claim of the plaintiff. He also submitted that appellant No.1 has not replied to the notice under Section 80 of CPC.

35. Learned counsel for respondents has further submitted that after the culmination of the first acquisition proceeding in 1993–1994, the plaintiff wrote a letter to the then Chief Minister specifically raising the problems faced by the plaintiff due to wrong entries in revenue record and the Chief Minister has sent said letter to the concerned Department of the Government. He also submitted that the Government directed the Collector, Jaipur to enquire and submit a report, and the Collector submitted a report which has been placed on record and relied by the plaintiff. He also submitted that the report clearly indicated that the property in question is known as 'Princess House' and belongs to the plaintiff, but erroneously entries were made in the revenue record and the Collector advised filing of a revenue suit for correction of entries. He also submitted that pursuant to the Collector's letter submitted after due enquiry, the plaintiff filed a revenue suit, but the same was returned on the ground that the land in question is Abadi land and the revenue Court has no jurisdiction. He further submitted that after return of the revenue suit on jurisdictional grounds, the plaintiff was constrained to file a civil suit, therefore, the appellants cannot raise any objection

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regarding the invocation of the jurisdiction of the civil Court in filing of the present suit. He also submitted that the objection raised by the appellants are contrary to the facts of the case. He further submitted that the Sub-Divisional Officer's (SDO) order is sufficient to draw a conclusion that the parties to the proceedings were well aware about the proceedings before the revenue Court and subsequent return of the revenue suit due to lack of jurisdiction. He also submitted that no party can be put to a disadvantage merely on the ground that the remedy adopted by the plaintiff is not permissible under the law when the plaintiff had already exercised the avenue of remedy suggested by the appellants.

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36. Learned counsel for respondents has further submitted to summon and requisition the records relating to previous land acquisition proceedings initiated by the UIT, so as to establish the fact that the entire property of 120 bighas was recorded and acknowledged as property of the plaintiff. He also submitted that in the note sheet approved by the competent authority, it was mentioned that the 120 bighas of land belonged to the plaintiff and that the plaintiff was the titleholder, as per convenant. He also submitted that throughout the land acquisition proceedings, it was stated that the property of Rajmahal and open land surrounding areas belonged to the plaintiff. He also submitted that the trial Court directed the appellants to submit the documents requisitioned and summoned by the plaintiff, but the same were not produced on the pretext that the file was untraceable. He also submitted that the appellants deliberately concealed the material to frustrate the plaintiff's suit, and when the trial Court took an adverse view on non-submission of the requisitioned documents

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under Order XI Rule 14 CPC the appellants have lodged an FIR for the missing of record, but till date, it remains untraceable. He also submitted that the record which ought to have been filed has not been filed by the appellants; therefore, an adverse inference be drawn against the appellants, as they not only concealed material supporting the plaintiff's case but also filed this appeal with an ulterior motive.

37. Learned counsel for respondent also submitted that the appellants did not put any questions to the plaintiff's witnesses regarding the defense raised by them. He also submitted that the letter (Exhibit A-4) was required to be put to cross examination of the plaintiff's witnesses and had to be proved by the defendants in their evidence, but same has not been done. He further submitted that the mere exhibition of any document unless it is a public document or a certified copy does not mean that the document is proved in accordance with law. He also submitted that all documents exhibited by the plaintiff clearly indicated that the property in question belong to the plaintiff, and same is admitted by appellant No. 2 in their entire record. He also submitted that the plan of Shubham Enclave, the acquisition proceedings initiated by the JDA, and other official documents clearly show that Rajmahal and the adjoining land belong to and are owned by the plaintiff

38. Learned counsel for respondents has further submitted that no evidence was produced by appellant No.1 before the trial Court, and the appellants' case is solely based upon documents filed in 2016 with an application under Order XLI Rule 27 of the CPC. He also submitted that appellant No. 2 (JDA), led by the Jaipur Development Commissioner (JDC), suddenly initiated action

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to take possession of Rajmahal and the adjoining land remaining after the UIT acquisition. In response to this action to dispossess the plaintiff, legal proceedings were initiated by the plaintiff, including a police case against the then JDC and other State officers.

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39. Learned counsel has also submitted that not a single ground was raised by counsel for the appellants in the memo of appeal to establish the relevance of bringing these documents on record. He also submitted that the JDC and other officers were granted bail by the trial Court, as it was prima facie found that appellant No. 2 had acted contrary to law and taken law in their hand.

40. Learned counsel has further submitted that after the second stay application, an application under Order XLI Rule 27 CPC was filed in 2016, followed by another application under the same provision bringing on record details of a succession case pending before the Delhi High Court. He also submitted that the documents submitted regarding the Delhi High Court case are incomplete, as there is no dispute therein concerning the current property. Furthermore, this was not raised as a ground in the memo of appeal.

41. Learned counsel has also referred application under Order XLI Rule 25 CPC, and submitted that neither ground regarding the bar under Article 363 of the Constitution of India was raised by appellant No. 2, nor is appellant No. 2 entitled to raise said ground. He also submitted that this is a joint appeal and no such ground exists in the memo of appeal and the sole purpose of filing these documents through the three applications is to seek a remand the matter, after setting aside the decree of trial Court.

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42. Learned counsel has also submitted that Issue No. 3 was not pressed, as Princess Diya Kumari was brought on record as the legal representative following the demise of the original plaintiff. He further submitted that the entire record indicates the plaintiff led both oral and documentary evidence on Issues No. 1 and 2, whereas the defendants failed to rebut the documents and evidence submitted by the plaintiff. He also submitted that no evidence is produced by the defendants regarding Issues No. 4, 5, 6, and 7; and in the absence of evidence, the appellants cannot challenge the findings recorded on Issues No. 4 to 7. He further invoked the principles of law governing civil cases, and submitted that a civil suit cannot be decided on basis of principles of writ petitions rather, the parameters are fixed, and the Court must strictly adhere to said parameters, under the CPC.

43. Learned counsel for respondents further referred the documents submitted by the plaintiff in evidence and pointed out that the property in question has always been identified and known as 'Princess House', which forms part of the Covenant. He also cited the judgment of the Hon’ble Supreme Court in case of **Gandhi Grah Nirman Sahkari Samiti Vs. State of Rajasthan** reported in ***AIR 1994 SC 2329***, and submitted that in said proceedings, the property was recognized as 'Princess House' and part of the Covenant. He referred the public documents on record and submitted that that they are admissible in evidence without any formal proof under the law, as the Evidence Act clearly provides a presumption in favor of such documents. He also referred a brief note on the suit property along with a tabulated chart showing the property remaining after acquisition.

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44. Learned counsel further referred the findings of the trial Court's on Issues No. 1 and 2, and submitted that the documents were duly proved and tendered in evidence and required to be rebutted with equally good evidence by the appellants, but the appellants have failed to discharge their burden. He also referred the law to read evidence in civil proceedings and submitted that even on the basis of preponderance of probabilities, it has been established that 54 bigha, 18 biswa land remaining after the taking over of possession of 65 bigha in 1993–1994 pursuant to execution proceedings initiated in 1972-73 by UIT (now appellant No.2) and the plaintiff (respondents) are absolute owners.

45. Learned counsel also referred the transfer of certain land out of the question land and submitted that appellant No. 2, JDA, has passed a map of the said land, and in the said cases, appellant No. 2 has not raised the issue of tittle and ownership. He further referred the conduct of the appellants and submitted that with a selective approach and with an intention to cause harm to the respondents/plaintiff, an illusory dispute was created, which is not within the purview of Article 363 of the Constitution. He also submitted that the judgments referred by learned AAG are not applicable upon the facts of the case, rather, the judgment in the case of Nataniyon Ka Bagh (later known as the Jai Mahal case) is applicable to the facts of the case. He placed reliance upon the judgment in the case of ***Jagat Singh v. Jaipur Development Authority, Jaipur (supra)*** decided by a Coordinate Bench and ***Satish Kumar Pareek v. State of Rajasthan, D.B. Civil Writ Petition No. 7133/2004 (PIL)***, decided on 05.05.2008 by a Division Bench of this Court.

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46. Learned counsel has placed reliance upon the judgment in the case of **Jaswant Singh Vs. Gurdev Singh & Ors. : 2011 (7) Supreme 345, Arjun Chandra Mehta Vs. Kailash Chandra : (2023 (3) DNJ (Raj.) 1292, Manita Tak & Ors. Vs. Ram Gopal Tanwar & Ors. : 2018(2) DNJ (Raj.) 823, Gandhi Grah Nirman Sahkari Samiti Ltd. Vs. State of Rajasthan & Ors. : AIR 1994 SC 2329, Abdul Latif & Ors. Vs. Nagar Vikas Pranyas, Udaipur : 2006 (4) WLC (Raj.) 66, Chief Conservator of Forest, Govt. of A.P. Vs. The Collector and Others : 2003(2) WLC (S.C.) Civil 203, Municipal Board Jhunjhunu through the Executive Officer Vs. Prahlad Ram (since deceased) Represented by Following LRs. : S.B. Civil Second Appeal No.62/1997, decided on 21.12.2017 (Raj.), Suraj Bhan & Ors. Vs. Financial Commissioner & Ors. (2007) 6 SCC 186, P. Kishore Kumar Vs. Vittal K. Patkar : Civil Appeal No. 7210 of 2011, Faqruddin Vs. Tajuddin : Civil Appeal Nos. 3643/2008, Urban Improvement Trust, Bikaner Vs. Gordhan Dass & Ors. : 2010(1) RJT 446, Banshidhar & Anr. Vs. Ram Narain : WLC 1997 (Raj.) UC 676, Suhrid Singh Vs. Randhir Singh & Ors. : (2010) 12 SCC 112, Kedar Agarwal and Anr. Vs. Rajkumr Agarwal and Ors : S.B. Civil Writ Petition No. 7484/2017, Rajasthan Avasan Mandal Vs. Miss Sunita Sharma : S.B. Civil Revision Petition No. 1034/93, Vidya Devi Vs. State of Himachal Pradesh & Ors. (2020) 2 SCC 569, Shakti Bhog Food Industries Ltd. Vs. Central Bank of India & Anr. : (2020) 17 SCC 260** and submitted that the plaintiff has explained not only the accrual of the cause of action, but also the limitation available for the plaintiff to raise the dispute**.**

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47. Learned counsel has placed reliance upon judgment in cases of **LRs. of Bal Bai & Ors. Vs. Laxman Singh & Ors. : S.B. Civil Misc. Appeal No. 1193/2006, Arvind Kumar Jaiswal (D) through LR Vs. Devendra Prasad Jaiswal Varun : Civil Appeal No. /2023 (@SLP (c) No. 9172 of 2020), Bhonri Devi Vs. Additional District Judge & Sessions Judge No. 14 : 2014 4 DNJ 1620, Arikala Narasa Reedy Vs. Venkata Ram Reddy Reddy Gari, (2014) 5 SCC 312, Sita Bai Vs. MangiBai : S.B. Civil Writ No. 4891/2008, Gobind Singh & Ors. Vs. Union of India & Ors. : Civil Appeal Nos. 5168-5169 of 2011, A. Andisamy Chettiar Vs. A. Subburajchettiar : Civil Appeal No. 14055/2025, N. Kamalam (Dead) & Anr. Vs. Ayyasamy & Anr. (2001) 7 SCC 503 and Mukesh & Anr. Vs. Sarpanch, Gram Panchayat, Bilothi : S.B. Civil Second Appeal No. 285/2020** to oppose the three applications filed under Order 41 Rule 27 of CPC and Order 41 Rule 25 of CPC. He also submitted that only after the return of the revenue suit by the SDO, the plaintiff filed a civil suit, and the same is sufficient for the plaintiff to establish the right to institute a civil suit. He also submitted that except for the objections raised before this Hon'ble Court at the time of arguments, no other objection had been raised, at the time of argument before the trial Court and no ground had been raised in the memo of appeal, and in the absence of any ground in memo of appeal or pleadings of the appellants, the AAG is not free to raise arguments. He also submitted that the arguments are not sufficient to presume the case in favour of the appellants.

Rebuttal by AAG

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48. In rebuttal, learned AAG has referred the judgment in the case of ***Jagat Singh (supra)*** and submitted that the Court has to draw a conclusion whether the dispute is illusory or a real dispute. He also referred Exhibit-83 and submitted that no document has been filed to show how this document was procured from the Estate Department, as original query has not been filed. He also referred to the statement of PW-1, in particular the cross-examination, and submitted that how Raj Kumar Kedia acquired Exhibit-83 was not known to him. He also referred the acquisition notification in respect of the remaining parcel of land issued subsequently between 1992 and 1995, and submitted that no award has been passed, and the same has not been challenged by the plaintiff; therefore, the plaintiff has no right to agitate on any of the grounds. Lastly, he submitted that the land in question belonged to the appellants, and the dispute raised by the plaintiff is a real dispute which requires interpretation of Covenant and identification of property, with findings as to whether the Princess' House is the same property for which the claim has been made. He also distinguished the case of *Nataniyon Ka Bagh or Jai Mahal* from the present case.

Proceedings before Analysis

49. Heard learned counsel for the parties and perused the material placed on record. Also considered the written submissions of both parties along with the judgments referred by both the counsels.

50. The instant First Appeal has been filed by appellants on 19.01.2012 and on 09.02.2012, the counsel for the respondents/plaintiff accepted a copy as Caveator. On 20.03.2012, it has been decided to dispose of this matter at

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the admission stage, and further, an interim order to the effect that the boundary wall of the suit property shall not be demolished was passed.

51. An application under Order XLI Rule 27 of C.P.C. was filed on 21 September 2016 for taking additional documents on record. Thereafter, on 22.09.2016 and 19.10.2016, interim orders were passed. Thereafter, two senior officers, Mr. Mukesh Sharma and Mr. Shikhar Agarwal, were called, and they have filed their affidavits pursuant to the order dated 19.10.2016, and their presence has been exempted on 30.11.2016.

52. On 20.11.2023, the first appeal was dismissed for non-prosecution, and pursuant to the order dated 28.11.2024, the appeal was restored to its original number, subject to deposit of cost of ₹5000/- but same was not deposited. An application under Section 151 CPC was filed by appellants but same was dismissed on 21.04.2025 and a DB Special Appeal was filed and same was also dismissed. Ultimately by order dated 09.01.2026 in Civil Appeal No.208/2026, current first appeal was restored with direction for disposal in four weeks. Thereafter, no one was present on behalf of the appellants on 15.04.2026, but the appeal was not dismissed; rather, the matter was adjourned.

53. On 12.05.2026, an application bearing number 8949/2016 under Order I Rule 8-A read with Section 151, C.P.C. was considered, and the same was dismissed, but liberty was granted that the appellants/defendants to raise legal objections during the course of arguments.

54. After considering the order dated 09.01.2026 in Civil Appeal No. 208/2026, a coordinate bench directed to list this matter on a priority basis. An application bearing number 2/26 under Order I

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Rule 10 of C.P.C. has been filed for impleadment, which was dismissed on 04.07.2026 at a cost of ₹10,000/-. On 08.07.2026, a Coordinate bench noticed that vide order dated 09.01.2026, the Hon'ble Supreme Court directed disposal within four weeks, and further adjourned the matter at the request of the appellants at a cost of ₹10,000/-. Again, on 16.07.2026, the appeal was adjourned at the request of the appellants at a cost of ₹20,000.

55. Thereafter, another application bearing number 3/2026 for taking additional documents on record has been filed. And on 10.08.2026, a Coordinate bench observed that the application shall be considered at the time of final arguments. Thereafter, an application number 4/2026 under Order XLI Rule 25 of C.P.C. read with Section 151 of C.P.C. was filed on 31.08.2026. Thus these applications under Order 41 Rule 27 CPC and under Order 41 Rule 25 are pending and we are deciding along with appeal.

Objection about Maintainability of Appeal:-

56. The instant first appeal has been jointly preferred by defendant Nos. 1 and 2 under Section 96 of the CPC aggrieved from the judgment and decree dated 24.11.2011. Section 96 obligates the Court to consider the case on facts and law and also to re-examine and re-evaluate both questions of facts and law. A preliminary objection has been raised by learned counsel for the respondents regarding filing of a joint appeal by the appellants, particularly when appellant No. 1 (defendant No.1) remained ex-parte and chosen not to file any written statement or any evidence.

57. Section 96 of the CPC permits an appeal against a decree even in the absence of any written statement or evidence on behalf of any of the defendant. Similarly, even if an ex parte

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decree is passed, notwithstanding the absence of a written statement, an appeal can be preferred against such decree.

58. The issue has already been considered by the Hon'ble Supreme Court in the case of ***C.N. Ramappa Gowda Vs. C.C.Chandregowda (Dead) By LRs., (2012) 5 SCC 265*** and also in the case of ***Malluru Mallappa (Dead) through LRs. v. Kuruvathappa and Others, MANU/SC/0166/2020***. Hon'ble Supreme Court has held that appellate jurisdiction in first appeal involves a re-hearing on law as well as on fact and is invoked by an aggrieved person.

59. The first appeal is a valuable right of the appellants and therein all questions of facts and law decided by the trial Court are open for re-consideration, therefore, the first appellate Court is required to address itself to all the issues and decide the case by giving reasons.

60. Hon'ble Supreme Court has clearly laid down that the Court of first appeal must record its findings only after dealing with all issues of law as well as facts and with the evidence oral as well as documentary, led by the parties. The judgment of the first appellate Court must display conscious application of mind and record findings supported by reasons on all issues and contentions.

61. Even if when the First Appellate Court affirms the judgment of Trial Court it is required to comply Order XLI Rule 31 of CPC and non-observance of said requirement leads to infirmity in the judgment of the first appellate Court. The expression upon agreement with the reasons given by the Trial Court would ordinarily suffice for the First Appellate Court while deciding the issue. The principle was laid down in case of ***Hari Shankar Vs.***

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Rao Girdhari Lal Chowdhary MANU/SC/0346/1961. Thus, the appellant No. 1 has a right to file and pursue the first appeal under Section 96 of CPC and there is no infirmity in a first appeal.

62. After thoughtful consideration of arguments advanced on behalf of both the sides and also on perusal of written submissions submitted by both the sides, we are of the view that the trial Court has framed as many as seven issues and issue No.1 and 2 are decided in favour of the respondents/plaintiff whereas issue No.4 to 7 are decided against the appellants/defendants. Issue No.3 has been not pressed as during pendency of the civil suit, Ms. Diya Kumari has been substituted as legal heirs of deceased plaintiff Maharaja Sawai Bhawani Singh and she succeeded as legal heir to the property of original plaintiff. Besides considering the issues as framed by the trial Court and decided in its judgment, there are certain issues which were raised during course of arguments by learned AAG and on basis of said grounds we are framing following additional grounds to consider the first appeal. The respondents have also raised about maintainability of appeal filed jointly by the defendants, particularly when appellant No.1 has neither filed any written statement nor any evidence to remain ex parte before the trial Court. These are :

(i) Whether the a joint appeal under Section 96 of CPC is maintainable when appellant No.1 remained ex parte and chosen not to file a written statement and evidence?

(ii) Whether the applications under Order 41 Rule 27 of CPC deserve to be allowed in the circumstance as referred by AAG?

(iii) Whether the trial Court has committed serious error in not considering bar under Article 363 of the Constitution while deciding civil suit?

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(iv) Whether suit is barred by law of limitation?

(v) Whether Civil Court lacks jurisdiction as it vests in revenue Court?

Applications under Order XLI Rule 27 and Rule 25 of CPC

63. Now, we have three applications left to be decided, and all are for taking additional documents/evidence on record. It is evident that one application was filed in the year 2016, whereas two other applications were filed in the year 2026. The material on record clearly indicate that none of these applications were part of the memo of appeal, and further, the applications were filed at different intervals when there were some issues during pendency of the appeal. Further, the first application was filed when there was a serious dispute about the dispossession of the respondents/plaintiff from the suit property at the behest of certain senior officers of appellant No.2, and the same has been noticed by this Court in the proceedings.

64. The entire material which has been placed on record has been scanned by us, and for the sake of brevity, we are not referring details, as we are considering the first appeal under Section 96 of C.P.C. within the parameters prescribed under the law

65. Order XLI Rule 27 of C.P.C. is reproduced as under:-

> "**27. Production of additional evidence in Appellate Court.—**
>
> (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—
>
> (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or
>
> (aa) the party seeking to adduce additional evidence establishes that notwithstanding the exercise of due

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diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed; or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

66. Order XLI Rule 25 of C.P.C. is reproduced as under:-

"**25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.—**

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time."

67. In the case of ***Sanjay Kumar Singh v. State of Jharkhand, reported in (2022) 7 SCC 247***, the Hon'ble Supreme Court considered the issue of necessary evidence under Rule 27 of Order 41 CPC for the proper determination of the suit which had not been brought on record, and held that the appellate Court has wide and ample powers even suo motu to consider taking on record the additional documents. The relevant paragraphs of the said judgment are reproduced as under:-

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> "7. It is true that the general principle is that the appellate Court should not travel outside the record of the lower Court and cannot take any evidence in appeal. However, as an exception, Order 41Rule 27 CPC enables the appellate Court to take additional evidence in exceptional circumstances. It may also be true that the appellate Court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate Court is to be considered is, whether or not the appellate Court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.
>
> 8. As observed and held by this Court in A. Andisamy Chettiar v. A. Subburaj Chettiar [(2015) 17 SCC 713], the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

68. The aforesaid judgment in the case of ***Sanjay Kumar Singh (supra)*** was considered by the Hon'ble Supreme Court in the case of ***Sirajuddin v. Zeenat & Ors., Civil Appeal No. 1491/2023,*** judgment dated 27.02.2023, and observed that if a party has not sought any permission to adduce evidence necessary to enable the trial Court to pronounce judgment on a substantial issue, then allowing additional evidence only on the ground that the High Court could not reach a conclusion on a preponderance of

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probabilities is not permissible. While considering the provision under Rule 27 of Order XLI of C.P.C., observed that if a party is in possession of evidence and fails to produce the same, then illustration (g) to Section 114 of the Indian Evidence Act may follow. The observation is reproduced as under:

> 14. In regard to the want of any particular evidence, we may observe in the passing that if the Court finds any particular evidence directly within the control and possession of a party having not been produced, the necessary consequences like those specified in illustration (g) to Section 114 of the Evidence Act3 may follow but, merely because a particular evidence which ought to have been adduced but had not been adduced, the Appellate Court cannot adopt the soft course of remanding the matter. We would hasten to observe that we are not commenting on the merits of the case either way. The observations herein are only to indicate that the remand of the suit for trial de novo cannot be considered justified in the present case from any standpoint.

69. Illustration (g) to Section 114 of the Indian Evidence Act reads as under:

"The Court may presume:-

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."

70. Very recently, the Hon'ble Supreme Court in the case of ***Chowdappa v. Hanumantharayappa & Ors., in SLP (Civil) Diary No. 10525/2026 [2026 insc 816]***, judgment dated 06.08.2026, considered the provision of Order XLI Rule 27 of C.P.C. regarding the production of additional evidence in the appellate Court, and described the duty of the appellate Court to consider a pending application along with the main appeal. It has

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been laid down that the application filed under Order XLI Rule 27 of C.P.C. must be considered simultaneously with the hearing of the main appeal on its merits to determine whether the Court requires the document to pronounce judgment or for any other substantial cause. The appellate Court is obligated to pass a specific order either allowing or rejecting the application, recording reasons if admitted. It has further been laid down that before evaluating additional evidence, the Court must first examine the parties' pleadings to ensure that the foundational case supports the introduction of the proposed evidence.

71. The provision of Order XLI Rule 27 of C.P.C. begins with a negative clause, which clearly reflects that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate Court. This means the production of additional evidence, either oral or documentary, is not a right; and if anyone produces such evidence, then the party has to make out a case within the exceptions provided under Order XLI Rule 27 of C.P.C.

72. The Hon'ble Supreme Court has clearly laid down that additional evidence at the appellate stage is exceptional and must satisfy statutory conditions as prescribed under Rule 27 of Order XLI of C.P.C.; and secondly, once an application is filed, it is the duty of the appellate Court to adjudicate it on merits rather than keeping it pending. The principles as culled out from the legal position are as under:-

(i) Rule 27 contemplates that either the evidence was wrongly refused by the trial Court, or the evidence could not be produced despite due diligence, or lastly, the appellate Court requires the evidence to pronounce judgment;

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(ii) The provision cannot be used to fill a lacuna; which means the appellant cannot take advantage of any exceptional circumstances to overcome its weakness.

(iii) The grounds for proposed evidence have to be tested on the basis of the pleadings of the parties. It is a general rule that while deciding the first appeal, an appellate Court cannot travel beyond the pleadings, issues, and evidence of the parties.

73. In the case of ***K.R. Mohan Reddy v. Net Work Inc., (2007) 14 SCC 257,*** and ***N. Kamalam v. Ayyasamy: (2001) 7 SCC 503***, which were considered in the case of ***A. Andisamy Chettiar v. A. Subburaj Chettiar: (2015) 17 SCC 713***, it was laid down that additional evidence cannot be permitted to patch up weak points in the case.

74. During course of arguments, the learned AAG candidly admitted that the documents were in the power and possession of the appellants, and due to the negligence of the officers, they could not be produced before the trial Court. It has also been admitted that the documents which were produced with the first application bearing number 23147/2016 were within their knowledge during the evidence of the defendants before the trial Court. Not a single ground is there in the written statement filed by defendant No.2, on 26.04.2004. The Appellant No. 1 has not filed any written statement in the trial Court. Thus, in the pleadings of the appellants before the trial Court, nothing is mentioned about the documents filed by the appellants by way of application number 23147/2016.

75. When we peruse the memo of appeal jointly filed by the appellants before this Court, then again in paragraph Nos. "a to ff", nothing has been mentioned about the additional evidence

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which they want to introduce in the instant case by way of application number 23147/2016. The learned AAG candidly admitted the fact that they are only on the ground that this Hon'ble Court may consider these documents, as essential documents for adjudication of the dispute between the parties.

76. The issue has already been considered in the case of ***A. Andisamy Chettiar v. A. Subburaj Chettiar (supra)***, after considering Section 107(1)(d) read with Order XLI Rule 27 of the CPC, and also expressing the circumstances under which additional evidence can be led. The pleadings of appellant No. 2 does not support the grounds as argued by the learned AAG.

77. Again, Application No. 3/2026 has been filed under Order XLI Rule 27 of the CPC at a very belated stage, when the Hon'ble Supreme Court directed the disposal of the matter within a period of four weeks. The circumstances of the appeal, as referred hereinabove, clearly reflect that the appellants remained negligent in pursuing the instant appeal. This implies that either the appellants are not serious about the issue, or they were aware about the fact that they have to drag respondents into litigation and prolong it so that the plaintiff or the decree-holders cannot enjoy the fruits of the decree.

78. Whatever be the cause, the appellants filed Application No. 3/2026 for no reason, as there is no pleading concerning the documents, which bear no connection to the instant case. If there is any dispute regarding the succession rights of Maharaja Man Singh, it is among the heirs, and not between the plaintiff and the appellants. None of the other parties claiming rights against the respondents/plaintiff are before this Court or the Trial Court, hence, Application No. 3/2026 was filed merely for the sake of

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filing. Thus, Application No. 3/2026 lacks substance, and no documents referred therein is necessary for the adjudication of the dispute.

79. One more application, Application No. 4/26, under Order XLI Rule 25 read with Sections 107 and 151 of the CPC, has been filed for framing an additional issue and deciding it on merits. In support of this application, the order dated 17.04.2025 in ***S.B. Civil Revision Petition No. 70/2020 (State of Rajasthan & Anr. v. Maharaja Sawai Man Singh II Museum Trust & Ors.)*** passed by this Court has been placed on record.

80. Order XLI Rule 25 of the CPC provides that an appellate Court may frame issues and refer them for trial to the Court whose decree is appealed from. The power of the first appellate Court has been considered by the Hon'ble Supreme Court in case of:

SBI & Anr. Vs. M/s. Emmsons International Ltd. & Anr., AIR 2011 SC 2906; Santosh Hazari Vs. Purushottam Tiwari, AIR 2001 SC 965; Madan Lal Vs. Yoga Bai, AIR 2003 SC 1880; Devi Theatre Vs. Vishwanath Raju, (2004) 7 SCC 337; Bihar Supply Syndicate Vs. Asiatic Navigation, AIR 1993 SC 2054; Jagannath Vs. Arulappa, (2005) 12 SCC 303; Rama Pulp and Papers Ltd. Vs. Maruti N. Dhotre, (2005) 12 SCC 186; Somakka (Dead) by LRs Vs. K.P. Basavaraj (Dead) by LRs, 2022 SCC OnLine SC 736.

81. In the instant case, the learned AAG referred the judgment solely on the ground to frame an additional issue and deciding the same on merits by referring it to the trial Court. The judgment has its own force and impact, and the same was already relied upon by the learned AAG during arguments.

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82. In case of ***Nedunuri Kameswaramma versus Sampati Subba Rao, AIR 1963 SC 884***, Hon'ble Supreme Court has considered Order 14 Rule 1 read with Section 100 of CPC, which is with regard to framing of additional issue in an appeal. It was held that a non-framing of issue not fatal where the parties went to trial fully knowing the rival case and led all the evidence.

83. Here in this case, the appellant No. 1 has not only stayed away from participating in the civil suit, but has not filed any evidence to support any contention. The appellant No. 2 is JDA, having its authority only under the Jaipur Development Authority Act, 1982 (hereinafter referred as JDA Act, 1982).

84. Before formally deciding these three applications, it is necessary to refer the composition and authority of appellant No. 2 JDA, which contested the civil suit, as the appellant No. 1 has not filed any written statement and evidence to contest the civil suit. The object and reasons at the time of introduction of the Bill for formation of JDA in Rajasthan State Legislature is reproduced as under:-

> for forming Jaipur City and certain contiguous areas into a Jaipur Region, to provide for the establishment of an Authority for the purpose of planning, co-ordinating and supervising the proper, orderly and rapid development of the Jaipur Region and of executing plans, projects and schemes for such development and to provide for matters connected therewith. Whereas Jaipur City and areas contiguous to it are being progressively developed and populated, and the necessity is being increasingly felt for forming these areas into Jaipur Region and for setting up of an Authority for the purpose of planning, coordinating and supervising the proper, orderly and rapid development of these areas, in which several Government departments, local authorities and other organisations are at present engaged within their own jurisdictions; to provide also that such Authority be enabled either itself or through other authority to formulate and execute plans, projects and schemes for the development of Jaipur Region so that housing, community facilities, civic amenities and other infrastructure are properly created for the population of Jaipur Region in the perspective of 2001 A.D. or thereafter including the intermediate stages;

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and to provide for matters connected with the purposes aforesaid.

85. The object and reasons clearly indicate that the Jaipur Development Authority was established only for purpose of planning, coordinating and supervising the proper, orderly and rapid development of Jaipur region and of executing plans, projects and schemes of such development and to provide for matters connected therewith. The Jaipur Development Authority has only the power as provided under the JDA Act and no power other than the JDA Act.

86. The power of acquisition and disposal of land has been provided in Chapter VIII of the JDA Act of 1982. Section 44 provides power to purchase or lease by agreement, whereas Section 45 empowers the State Government to acquire land. Section 46 provides that where any land is taken possession of, the State Government shall make the land available to the Authority for the purpose of performing of its functions, discharging its duties and exercising its powers. Section 54 provides a provision about the land to vest in Authority and its disposal, whereas Section 54-A provides transitory provisions for pending matters relating to acquisition of land. The provision of Section 54-B, 54-C, 54-D, 54-E has nothing to do in the matter. One more provision which has been referred during course of argument is Section 90 of the Act, and same is reproduced as under:

90. Control by State Government.

The Authority shall exercise its powers and perform its duties under this Act in accordance with the policy framed and the guidelines laid down, from time to time by the State Government for development of the areas in the Jaipur Region.

The Authority shall be bound to comply with such directions which may be issued, from time to time, by

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> the State Government for efficient administration of this Act.
>
> If, in connection with the exercise of the powers and the performance of the duties of the Authority under this Act, any dispute arises between the Authority and the State Government, the matter shall be decided by the State Government and its decision shall be final.

87. Section 93(1) empowers the State Government by notification in Official Gazette to delegate any of powers conferred on it by or under this Act, whereas Section 92 overrides the provision of other laws. A very important provision is Section 94, which empowers the local authority, such as Nagar Nigam, to continue to perform duties, which means the JDA and Nagar Nigam both have to function independently.

88. The provision of the JDA Act, 1982 clearly laid down a boundary/Lakshman Rekha for appellant No. 2, and it cannot exceed its limit, and travel beyond the provision of law. In the instant case, appellant No. 1 has not authorized appellant No. 2 to act and plead case on behalf of appellant No. 1. The defence of the appellant No. 2 is its own and not of appellant No. 1. Thus, the appellant No. 1 and 2 are two different set of entities. The appellant No. 2 is controlled by appellant No. 1, but conversely, the decisions of appellant No. 2 are not binding upon appellant No. 1. If appellant No. 1 has issued certain directions, then appellant No. 2 is duty bound to comply the direction in letter and spirit, and it has no independent existence, and cannot take any independent view on the matter, other than act in accordance with directions issued by the appellant No. 1.

89. Appellant No. 2 has no authority under the law to take control of any of the revenue land, not specifically allotted or assigned to appellant No. 2. The land parcel, if in revenue record but not vested in appellant No. 2, then it vests with the Collector

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on behalf of Revenue Department. Thus, the appellant No. 2 can only plead and defend on behalf of appellant No. 2, and not on behalf of appellant No. 1, unless authorised by appellant No. 1. There is no authorization by appellant No.1 on record.

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90. Learned counsel for the respondents have placed reliance upon judgment in case of **Govind Singh and others versus Union of India and others : Civil Appeal No.5168-5169 of 2011,** ***A. Andisamy Chettiar v. A. Subburaj Chettiar*** **(supra),** ***N. Kamalam (Dead) and Anr. v. Ayyasamy and Anr.*** **(supra)**, decided by Hon'ble Supreme Court in support of his submissions to oppose application under Order XLI Rule 27 CPC. He also placed reliance upon judgment in case of **Mukesh and Anr. Vs. Sarpanch Gram Panchayat, Bilothi S.B Civil Second Appeal No. 28/2020** decided on 24th July 2023 by a Coordinate Bench of this Court.

91. The material on record clearly indicate that the all documents filed with Application No. 23147/2016 within knowledge and possession of appellants before tendering their evidence in the Civil Suit in the trial Court but they have not filed these documents in their evidence, may be the documents were not considered relevant for adjudication of case.

92. A fact which has been referred during course of arguments also indicate that at the time of cross-examination of PW-1 Narender Singh, the counsel for appellant No.2 has asked to subsequent land acquisition proceeding and order passed in year 1995, which indicate that the defendant No. 2 has knowledge about the documents or the documentary evidence which they want to introduce under Order 41 Rule 27 CPC at the time of filing

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of written statement in the trial Court and also current appeal before this Court. None of the pleading of the appellant No. 2 supports the contentions of learned AAG about introduction of said documents in the memo of appeal. The appellant No. 1 has not filed any written statement or evidence before the trial Court. The memo of appeal jointly filed by the appellants also lacks the grounds about these documents.

93. The entire material as placed on record clearly indicate that the intention of the appellants is to get the matter remitted back to the trial Court so that the judgment and decree passed in favour of the respondents may not exist and it may restore back authority to the appellant No. 2. The proceeding in the instant case as referred hereinabove also demonstrate conduct of the appellants which is sufficient to draw a conclusion that these documentary evidences have been filed only to frustrate the decree in favour of the respondents-plaintiffs. If we assume that these documents could not be filed before the trial Court due to negligence or convenience of the Officers of the appellants, even then the principle of law as explained hereinabove about taking document on record under Order 41 Rule 27 of CPC prohibits taking these documents on record on the ground that allegations about negligence or convenience of officers of appellants have neither been pleaded nor been established on record.

94. Moreover to fill up the lacuna or to attain a specific purpose, a documentary evidence cannot be taken on record, in an appeal. Two applications which were filed in 2016 and 2026 respectively were filed when there was sword hanging on the head of the appellants for disposal of these appeals and same is sufficient to

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draw a conclusion that these documents are filed just to cover up the case and create a new defence by the appellants, therefore both the applications Nos.23147/2016 and application No.3/2026 lacks bonafides and deserves to be dismissed.

95. The appellants have filed another application under Order 41 under Rule 25 CPC for framing additional issues and direction to trial Court to decide the issue on merits. We have discussed the very object of filing of the application, during pendency of appeal. The counsel for respondents have placed reliance upon judgment in case of **LRs of Bal Bai and others versus LRs of Laxman Singh : SBCMA No.1193/2006** decided by a Coordinate Bench at Principal Seat, Jodhpur on 18th April 2026 wherein it was observed that unless the conditions under Rule 23, 23A and 25 of Order CPC are satisfied an order of remand cannot be passed. A remand is permissible only when a suit is disposed of on a preliminary issue.

96. Learned counsel for the respondents have also placed reliance upon judgment in case of **Arvind Kumar Jaiswal (D) through LR Vs. Devender Prasad Jaiswal Varun :Civil Appeal No. ...../2023 [@ SLP (Civil) 9172/2020],** wherein Hon'ble Supreme Court has observed that an order of remand prolongs and delays the litigation and hence should not be passed unless the Appellate Court finds a retrial is required or the evidence on record is not sufficient to dispose of the matter for reasons like lack of adequate opportunity of leading evidence to a party, where there had been no real trial or dispute or there is no complete or factual adjudication of the proceedings and the party complaining has suffered material prejudice on the account. This

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has been based upon principle of law laid down in case of **Shivakumar & Ors. Vs. Sharanabasappa & Ors. :(2021) 11 SCC 277** and **Smt. Bachahan Devi & Anr. vs. Nagar Nigam, Gorakhpur & Anr. : (2008) 12 SCC 372**.

97. The learned counsel for the respondents has further placed reliance upon **Bhonri Devi vs. Additional District And Sessions Judge No. 14, Jaipur Metropolitan :(2014) 4 DNJ 1620, Arikala Narasa Reddy vs Venkataram Reddy Reddygari & Anr : (2014) 5 SCC 312 and Sita Bai Vs. Mangi Bai :S.B. Civil Writ Petition No.4891/2008** passed by this Court.

98. The legal position for consideration of application under Order 41 Rule 25 CPC which has been filed in year 2026 does not support the contention of learned AAG. The case of appellant is to frame an additional issue though the issue which learned Additional Advocate General want to frame was already within knowledge of the appellants and the appellants were well aware about the grounds available for them at the time of filing of written statement in the trial Court.

99. The appellants in particular appellant No.2 was aware about filing of a revenue suit before SDO and service of a notice under Section 79 of the JDA Act upon them before filing of current suit about the dispute. The appellant No. 1 has chosen to stay away from the proceedings and at the stage of first appeal, the appellant No. 1 came into picture as main actor but before the trial Court the appellant No. 1 remains as fencesitter. The defense of appellant No. 2 cannot be same as that of appellant No. 1. The appellant No. 2 has no authority under the JDA Act unless

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authorized by the State Government to contest the suit on behalf of appellant No. 1. The appellants are not free to act beyond law and they are not exempted from any law rather bound to follow the provisions of law, therefore all the contentions advanced by learned AAG on behalf of appellants are not only beyond the pleadings of the appellants but also not supportive of any of the ground required to be considered to allow these applications, therefore both the applications under Order 41 Rule 27 CPC and application under Order 41 Rule 25 CPC (23147/2016, 3/2026 and 4/2026) deserves to be dismissed.

Objection about Article 363 of the Constitution

100. Now comes the legal objection about Article 363 of Constitution of India as learned Additional Advocate General has by and large argued only on jurisdictional issue as suit is barred under Article 363 of Constitution of India.

101. Learned Additional Advocate General has placed reliance upon judgment in case of **State of Madhya Pradesh versus Usha Devi (supra), Dropdi Devi versus Union of India and others (supra), Dr. Karan Singh Vs. State of J & K (supra), Sawai Tej Singh Ji versus Union of India (supra)** passed by Hon'ble Supreme Court, wherein it was held that any dispute arising out of terms of covenant cannot be adjudicated by Civil Court as being barred by Article 363 of the Constitution of India. Learned Additional Advocate General has also placed reliance upon judgment in case of **Rajmata Krishna Kumari versus State of Rajasthan and others. DB Civil Appeal No.404/1994** passed by a Division Bench of this Court. Learned Additional Advocate General has also placed reliance upon judgment in case of **State**

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of Rajasthan and anr. versus Maharaja Sawai Man Singh-II Museum Trust City Palace Jaipur (supra) passed by this Court while considering civil suit filed by by respondents for another property under the covenant and after considering the Article 363 of the Constitution of India, this Court has allowed revision petition of the State of Rajasthan and rejected the civil suit filed by respondents to claim possession of the properties by filing a civil suit.

102. Learned counsel for the respondents have placed reliance upon judgment in case of **Jagat Singh versus Jaipur Development Authority** (supra) decided by a Coordinate Bench of this Court and further affirmed by Hon'ble Supreme Court wherein a civil suit was filed by plaintiff to claim land adjoining to a property under the same covenant and after drawing a distinction of illusory and real dispute, a Coordinate Bench has allowed the second appeal and restores the original decree passed by the trial Court and set aside the judgment of First Appellate Court. The counsel for respondents have further placed reliance upon judgment in case of **Satish Kumar Pareek Vs. State of Rajasthan** (supra) to support his contentions that the plaintiff has not filed any civil suit against the covenant or for interpretation of covenant.

103. The language used under Article 363 bar the jurisdiction of the Courts in dispute arising out of treaties, agreements, engagements, sanad or similar instrument which was entered into or executed before the commencement of the constitution between the Ruler of Indian States and the Union of India or its predecessors. The exception to this bar is Article 143, which

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allows the President of India to seek an advisory opinion of the Supreme Court on any question of law or fact. The purpose behind introduction of Article 363 is to address disputes relating to historical agreements and treaties made before the Constitution's commencement.

104. While considering the bar under Article 363 of Constitution, we have observed in **State of Rajasthan Vs. Maharaja Sawai Man Singh-II Museum Trust** (supra) as under:-

> 30. Learned counsel for respondent(s)-plaintiff(s) has referred jugdment in case of **Talat Fatima Hasan Through Her Constituted Attorney Syed Mehdi Husain Vs. Syed Murtaza Ali Khan (Dead) by Legal Representative and Ors. (2020) 15 SCC 655** to substantiate the right of rulership and incidents thereof, distinguished from ownership of private properties of ruler, so declared by him, hence, rule of primogeniture not ipso facto applicable in case of succession of such private properties. The judgment referred by learned counsel has no bearing upon instant case as we are not considering any issue relating succession.
>
> 31. Two specific commissions **Sarkaria Commission (1983)** and **Punchhi Commission (2010)** have considered and referred the provision relating to Article 363. Though, Sarkaria Commission was with regard to Centre-State relation and implication of historical treaties and agreement on Centre-State relation, but it has discussed the historical agreement and their impact on Centre-State relations. The Punchhi Commission, (2010) discussed the historical context of agreement with princely States. The sum and substance of Article 363 is that if any dispute arises out of any specific treaty, agreement, Covenant or other legal document executed prior to commencement of Indian Constitution then same cannot be resolved by invoking the jurisdiction of any Court or Tribunal under the Indian Justice system.
>
> 32. This issue was considered in detail by a Special Bench (5 Judges) of Hon'ble Supreme Court in case of **State of Seraikella vs Union of India And Another AIR 1951 SC 253** and after considering the Article 363 of Constitution of India and referring the judgment in case of **Moon Vs. Burden 1948-2-EX-22,** and **Beadling Vs. Golt 1922-139-TLR-128** held that

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Article 363 over-rides the other provision of Constitution. Hon'ble Supreme Court in a majority decision led by Hon'ble the Chief Justice Kania held that even the jurisdiction of Supreme Court under Article 363(1) of Constitution supersedes any other provision under Article 374(2) and the Supreme Court has no jurisdiction to entertain the suit arising out of instrument executed before the Constitution, even if such suits were pending at the time of coming into force of Constitution.

33. The judgment in case of **State of Seraikella vs Union of India And Another (supra)** was relied in case of **H.H, Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior Etc. Vs. Union of India and Anr. reported as AIR 1971 SC 530 [MANU/SC/0050/1970]** and **The State of Karnataka by its Chief Secretary vs State of Tamil Nadu by its Chief Secretary (2018) 4 SCC 1**. Further, this judgment was referred in case of **State of Himachal Pradesh Vs. Union of India (2011) 13 SCC 344**, **Maharaj Umeg Singh and Others vs The State of Bombay And others AIR 1955 SC 540**, and **State of Bihar Vs. Union of India, AIR 1970 SC 1446.** The principle of law as settled upon Article 363 of Constitution of India reinforces the limitation on jurisdiction of Courts in the country and by denying jurisdition the jurisdiction of the Courts, the purpose of maintaining stability in the agreements entered with rulers of Indian States has been achieved. If any of the party seeking to challenge administrative action based on constitutional instrument have to find alternatively legal avenues and the only remedy is Article 143 of Constitution of India.

34. In case of **Karan Singh Vs. State of Jammu and Kashmir and Ors. (supra),** Hon'ble Supreme Court has considered bar under Article 363 of Constitution and answered following question:-

> "Bar of Article 363 of the Constitution of India to the maintainability of the writ petition?"

35. While referring the judgment in case of **H.H, Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior Etc. Vs. Union of India and Anr. (supra), Union Of India vs Prince Muffakam Jah & Ors. AIR 1995 SC 498,** and **Kunwar Shri Vir Rajendra Singh vs Union of India & Ors. (1970) 2 SCR 361** has held that any right arising out of or relating to treary, Covenant agreement etc. as mentioned in Article 363 is barred to be determined by any Court.

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> 36. Learned counsel for respondent has referred the judgment in case of **Jagat Singh Vs. The Jaipur Development Authority (supra)** CSA No. 12/1987 affirmed in SLP (Civil) No. 2803/1989, **Satish Kumar Pareek Vs. The State of Raj. & Ors (supra),** and **Director of Estate Vs. Maharaja Brigadier Sawai Bhawani Singh and Ors. (supra),** wherein the proceeding was found to be maintainable. The judgments relied by learned counsel for respondent does not pertains to applicability and enforcement of rights conferred under the Covenant and also bar under Article 363 of Constitution of India, therefore, these judgments are not helpful and applicable in the instant case."

105. In case of State of **Madhya Pradesh versus Usha Devi** (Supra), the dispute was with regard to title of Birs initially under the control of the Household Department of Holkar State. The Holkar State entered into a covenant with Government of India on 7 May 1949. The plaintiff has moved the Sub-Divisional Magistrate for adjudication of a dispute arisen due to some orders passed by the State Government and directing the plaintiff to hand over the property on the ground that the scheduled property has been declared as property of the State. During proceedings of civil suit, voluminous documentary evidence were marked as Exhibits by the plaintiffs but only two documents were marked as Exhibits by the defendant/State.

106. After considering the ratio laid down in case of **Dropadi Devi (supra) and Sawai Tej Singh (supra**), Hon'ble Supreme Court in case of **State of MP Vs. Usha Devi** (supra) has observed as under.

> "13. Drawing support from Draupadi Devi (supra) learned senior counsel submitted that the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out of the terms of the Covenant, is not adjudicable by Courts being beyond their jurisdiction by reason of Article 363 of

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the Constitution. The origin of the Suit goes to the Government of India's letter dated 3rd October, 1963 rejecting the application of the respondent to include the disputed birs in the list of private properties of the Ruler under Item No. 14. Thus, the claim of the plaintiff is clearly a dispute arising out of the terms of the Covenant and jurisdiction of the Courts to adjudicate such disputes is clearly barred by virtue of Article 363 of the Constitution.

14. It is further contended that the High Court has failed to take into account the facts of the case in their true perspective and gravely erred in declaring that the birs in question are the private properties of late Maharaja, father of the respondent/ plaintiff. The properties did not figure anywhere in the list of private properties of late Maharaja, nor the birs were ever accepted by the State as private properties and hence the respondent had never succeeded to the ownership of these birs. In the guise of "interpretation of the Covenant", the respondent wants to usurp rights over these birs which are pure Government properties. Only with an ulterior motive of claiming ownership on these birs as if they were private properties of late Maharaja, the respondent wrote the letter dated 29th December, 1962 to the Government of India, to include the disputed lands in the list of private properties of the Ruler. These birs were in the possession of the Army Grass Farms when the Covenant was signed and after annexation, the Centre of the Madhya Bharat Army was merged with the Government of India and the Defence Department of the Government of India had taken over charge of these lands. When the Government of India took a decision in 1955 to close some Army Grass Farms, the disputed birs were ordered to be returned back to the concerned Departments of the States. Therefore, the lands in question were correctly and intentionally not mentioned in the list of private properties of the Ruler as the same were then subjects of the Government of India. The respondent's legal notice dated 12.6.1964 to the Collector, Indore under Section 80 of the Civil Procedure Code categorically states her admission to the acknowledgement that after Federal Financial Integration there was an order by the President of India dated 6.10.1955 whereby the properties in question were ordered to be vested with the Madhya Bharat Government.

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The Government of India, by its letter dated 3rd October, 1963 clearly stated that the re-transfer of possession of these disputed lands by the Holkar Army Grass Farm to the Household Department was unauthorized and has not been accepted by the Defence Ministry.

15. Learned senior counsel further contended that the view taken by the High Court qualifying the respondent for the benefit under Section 158(2) of the Madhya Pradesh Land Revenue Code, 1959 is also arbitrary and wholly erroneous for the reason that under Section 158(2) of the Code, only the Ruler holding land by virtue of the Covenant or agreement entered by him before the commencement of the Constitution shall be a bhumiswami. In the present case where the applicability of rights through Covenant itself is in dispute, no bhumiswami rights could be granted by virtue of the Covenant. If the plaintiff had paid any revenue for these birs that was done only in ignorance of the fact and no rights would flow on that basis as these lands have never been given on lease by any competent authority to the plaintiff. Moreover, two birs namely bijasan and berchha are part of Reserve Forest Area and on them no rights would accrue to the respondent.

16. Summing up his arguments, learned senior counsel for the State, finally submitted that the High Court by wrongly appreciating the facts of the case, allowed the appeal filed by the respondent ignoring the constitutional provisions contained in Article 363, and also did not look into the grounds of review in their proper perspective, resulting in miscarriage of justice. The review of judgement on the basis of discovery of new document is also permissible in terms of Section 114 read with Order XLVII of the Code of Civil Procedure. Thus the decision of the High Court is ultra vires the Constitution and the impugned judgments are required to be set aside by this Court.

17. Learned senior counsel appearing for the respondent—plaintiff strongly raised an objection to the filing of certain documents by the appellant which were not exhibited before the Trial Court and submitted that when the appellant sought to place on record these documents for the first time along with the Review Petition, the High Court did not permit them to do so. Even while remitting the matter to the Trial Court, the High Court clearly

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mentioned in its order dated 24th March, 2000 that "while deciding the matter again, the Trial Court will not record any further evidence nor will allow the parties to make any amendments in the pleadings". The appellant did not challenge this direction of the High Court and in fact, the appellant obeying this direction, did not produce any additional evidence or document before the Trial Court when the matter was heard again by the Trial Court. After so many years of litigation, placing some documents on record for the first time before this Court cannot be permitted.

20. Further, learned senior counsel contended that the Covenant had emerged pursuant to the merger of various Princely States of Central India for the formation of Madhya Bharat State. In terms of Article XII of the Covenant, a list of properties was furnished by the then Ruler which was duly approved by the Government of India and the disputed lands are ipso facto covered under Item No. 14 which expressly and in unambiguous terms specified that "all properties under the administrative control of the Household Department of the Holkar State". Arguing that under the heading 'Miscellaneous' in the list of properties, before mentioning the details of properties, it has been specifically noted that "the above properties claimed consist in the main, of the following:" which leads to the inference that the list is not a comprehensive one and the words "in the main" provides that only some prominent properties are mentioned giving scope for other properties which are not specifically mentioned in that list. Even from record, it is evident that the properties in dispute were taken over by the Army Department of the Holkar State in the year 1945 "only as an experimental measure" for one year, meaning thereby, the actual control always remained with the Household Department of the Ruler. The communication dated 22nd January, 1951 (Annexure R/3) of Headquarters of Madhya Bharat Force, Gwalior also supports this version, wherein it was clearly mentioned that the disputed lands were "on rent from Household Department of H.H. Indore". Other communications dated 21st May, 1951 and 30th May, 1951 of the Army Grass Farms, Indore (Annexures R/4 & R/5) also categorically specify the handing over of these properties to the Chief Administrative Officer-in-

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charge, Household Department on behalf of Maharaja. In addition, Clause 20 of the list of private properties of the erstwhile Ruler makes it abundantly clear that after merger, the Madhya Bharat Government shall hand over to the Ruler, the possession of such properties which are mentioned in the list as private properties but are under the control of Madhya Bharat Government. Accordingly, the possession of these disputed properties was given to the Ruler on 30th May, 1951.

23. Having heard the learned senior counsel on either side, the following issues of law emerge for consideration before this Court:

1. Whether the dispute in the present case could be ascribed to the terms of the Covenant entered into by the Ruler with the Government of India thereby attracting provisions of article 363 of the Constitution of India? If so, whether the bar on the jurisdiction of Courts as envisaged under article 363 of the Constitution of India is applicable to the present case in adjudicating the rights of the plaintiff/respondent in a Civil Suit?

25. Coming to the facts of the present case, on 16-06-1948 through the Covenant that is exhibit P-79 Maharaja of Holkar along with other Princely States agreed to merge with the dominion of India.

27. According to Article 12 of the Covenant, the Ruler can enjoy the rights over his personal properties which are included in the Covenant for which purpose a list of his personal properties was required to be submitted to the Government. The said Article reads thus:

(1)The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh.

(2) He shall furnish to the Raj Pramukh before the first day of August, 1948 an inventory of all immovable properties, securities and cash balance held by him as such private property.

(3) If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be referred to such person as the Government of India may nominate in consultation with the Raj Pramukh and the decision

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of that person shall be final and binding on all parties concerned.

...No such dispute shall be referable after the first day of July, 1949.

(emphasis supplied)

26. As per article 12(2) of the Covenant, the Maharaja of Holkar has furnished the details of the properties under different Heads. He furnished the details under the Heads as immovable properties comprising of the properties inside the State, outside the State, miscellaneous and at clause 14 "certain properties under the administrative control of the Household Department of the Holkar State except such of the afore mentioned property with the Household Department as had already been transferred to the two guest houses at Indore viz the ones situated in the building which was known as the Indore hostel and the other in Rajender Bhavan on the Bombay-Agra road".

27. The Suit scheduled properties which are in possession of the plaintiff finds no mention in the entire list of properties, but the plaintiff derives his title to the property from Clause 14 of the list of properties which speaks about all properties under the control of the Household Department. The plaintiff to substantiate her case that the Suit schedule properties are private properties is relying upon clause 14 of the list of properties, the taxes paid by her and her father in respect of these properties, the communication dated 07-05-1948 and letter dated 30-01-1956 wherein the Suit scheduled properties were retransferred to the Household Department. Though lot of evidence was adduced on behalf of the plaintiff about paying taxes to substantiate her case that the Suit scheduled properties are the private properties of the Ruler, the core issue that requires to be adjudicated is whether it is the personal property of the Ruler or the property was belonging to the State. To give any finding with regard to the ownership of the property invariably we have to look at the Covenant for the reason the Covenant is the source of title for the plaintiff. At any stretch of imagination, we cannot agree with the finding of the appellate Court that the right of the plaintiff is a pre-existing right. By all means the right of the plaintiff flows from the Covenant by virtue of which the plaintiff claims title over these properties,

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which according to her are declared as private properties of the Ruler.

28. A bare perusal of Article 363 and the relief sought by the plaintiff in the Suit in unequivocal terms attracts the bar contained in Article 363 of the Constitution of India. The Court below distinguished the judgment in Draupadi Devi's case that it is not applicable to the facts of the present case. We are of the considered opinion that the rule of law laid down in that case applies to the case on hand. This Court in the case of Draupadi Devi held:

44. "… …The Covenant is a political document resulting from an act of State. Once the Government of India decides to take over all the properties of the Ruler, except the properties which it recognises as private properties, there is no question of implied recognition of any property as private property. On the other hand, this clause of the Covenant merely means that, if the Ruler of the Covenanting State claimed property to be his private property and the Government of India did not agree, it was open to the Ruler to have this issue decided in the manner contemplated by clause (3). Clause (3) of Article XII does not mean that the Government was obliged to refer to the dispute upon its failure to recognise it as private property. Secondly, the dispute as to whether a particular property was or was not recognised as private property of the Ruler was itself a dispute arising out of the terms of the Covenant and, therefore, not adjudicable by municipal Courts as being beyond the jurisdiction of the municipal Courts by reason of Article 363 of the Constitution".

29. The above ratio laid down by this Court makes one to understand that prior to Covenant, the ownership of all the properties remain vested with the Ruler, but once the Covenant is entered into, the Government takes over all the properties except those which the Government recognises as private properties of the Ruler. This Court had categorically held that there cannot be any implied recognition of the property as private property at any later stages when an opportunity had already been granted to raise this issue in terms of clause (3) of Article 12 before defined period. In the case on hand also, similar clause existed where a dispute to recognise a property as private property

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could be raised only before 1st July, 1949. A dispute whether a property was recognised as private property or not was held to be a dispute arising out of the terms of Covenant, thereby barring the Courts to adjudicate the same in view of Article 363 of Constitution.

32. In view of our above discussion and as settled by this Court in the above judgments, Covenant was an act of State and any dispute arising out of its terms cannot form the subject matter in any Court including the Supreme Court, and there cannot be any implied recognition of the property as private property at any later stages when an opportunity had already been granted to raise issue in terms of clause 3 of Article 12 before defined period; above all, the properties do not find place in the Covenant. The plaintiff is trying to interpret the Covenant that all properties which are in the custody of the Household Department are the personal properties of the Ruler. We feel that such interpretation and implied recognition is impermissible as held by this Court in Draupadi Devi. Hence the Court below erred in entertaining the Suit without properly taking into consideration the judgments and the proposition of law laid down by this Court in catena of cases. Hence we are of the view that the relief in the Suit falls within the ambit of Article 363 of the Constitution of India and the Suit is not maintainable. Accordingly first issue is answered in favour of the appellant/State and against respondent/plaintiff.

33. Once we have given our finding on the maintainability of the Suit, we need not to go into the other issues. But in view of the alternative argument advanced by the counsel, we are of the view that we should throw some light on those issues. It is the finding of the Trial Court that the lands were retransferred to the Holkar State in the year 1951, and re-transferring is without any authority and it is bad. The Trial Court held that though it is the specific case of the plaintiff that they are paying Tauzi, there is no evidence to show that they have paid Tauzi prior to 1951 and the correspondence of the plaintiff and her father shows that the Suit scheduled properties were not included in item no 14 of the list of properties and further held that Suit scheduled properties were allotted to the Forest Department. First coming to the issue of transfer of land to Forest Department,

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it is settled law that parties are governed by their pleadings and the burden lies on the person who pleads to prove and further plaintiff has to succeed basing on the strengths of his case and cannot depend upon the weakness of the defendant's case. The State having alleged several things, has failed to mark any document to show that the properties were transferred to the Forest Department and the retransfer in the year 1951 was without any authority of law. Though the State has filed certain documents before us, but as they are not part of the evidence, we are not inclined to look at those documents.

35. The plaintiff by marking the voluminous documentary evidence and by examining PW 5 and PW 7 established that they were in continuous possession of property till 1960, except for a short period when the Suit scheduled properties were given to the Army Department. Tauzi was also paid by Maharaja and later by the plaintiff. The finding of the Trial Court in this regard that the plaintiff has failed to adduce any evidence to show that Tauzi was paid prior to 1951, is contrary to the material on record. In spite of all these factors that the Maharaja and the plaintiff were in continuous possession of property and paid Tauzi for the properties, however long the plaintiff's possession may be and paying of the taxes will not give her any right seeking declaration of ownership when these properties are part of a Covenant and calls for an interpretation of the Covenant. In addition to this, the plaintiff wrote a letter to the Additional Chief Secretary, Government General, Administrative Department, Bhopal, dated 1st October 1962, wherein she requested for a declaration of the Suit scheduled properties as the private properties as declared by the Maharaja of Holkar which clearly shows that the whole cause of action and the reliefs sought for in the Suit are based on the Covenant and the rights flown from the Covenant.

36. We are not inclined to go into the discussion whether the re-transfer of land is without authority or not, whether these properties are under the control of Household Department as it amounts to deciding the dispute arising out of the Covenant, which is barred under Article 363 of the Constitution of India. Even assuming for a minute that these properties are under the control of the

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> Household Department, still the plaintiff cannot succeed for the reason that Maharaja of Holkar in the list of properties furnished has failed to mention these properties specifically, and interpretation of Covenant is not permissible as per settled law."

107. The judgment in case of **Dropadi Devi** (supra) was referred and relied by Hon'ble Supreme Court in case of **Usha Devi (supra),** wherein Hon'ble Supreme Court has determined a question whether a suit for declaration is maintainable in view of the bar under Article 363 of Constitution. While answering the question it was held that if, the Ruler of covenanting state claimed property to be his private property and the Government of India did not agree, it was open to the Ruler to have this issue decided in the manner contemplated by Clause (3) of Article XII but it does not mean that Government was under an obligation to refer the dispute upon its failure to recognize it as private property. A dispute as to whether a particular property was or was not recognized as private property of the Ruler was itself was a dispute arising out of terms of covenant and therefore not adjudicatable by Municipal Courts as being beyond the jurisdiction of the municipal Courts by reason of Article 363 of Constitution.

108. In case of **Dr Karan Singh versus State of Jammu and Kashmir** (supra), Hon'ble Supreme Court has considered Article 363 in relation to a writ petition under filed Article 226 of the Constitution of India. In case of **Sawai Tej Singh versus Union of India** (supra), again considering the dispute with regard to covenant as Sawai Tej Singh ji has filed two civil suits with prayer that three properties known as the Secretariat building, Daulat Khana building and Indra Viman Station to be declared as private properties of the plaintiff and the State of Rajasthan be ejected

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therefrom or alternatively pay rent at specified rate. After considering the dispute, Hon'ble Supreme Court has held that the dispute is barred in wake of Article 363 of Constitution.

109. In case of **Rajmata Krishna Kumari versus State of Rajasthan** (supra), a Division Bench at Principal Seat, Jodhpur has considered a special appeal arising out of writ filed to challenge order of Government dated 30th November 1991 and that of the Executive Engineer dated 1st October 1992 by both of which the State declined to continue free water supply for irrigation purpose to Sadri Ka Garden situated at Sadri to the appellants till outstanding dues towards irrigation charges were paid and for quashing the demand notice dated 30th October 1992 calling upon the appellants to pay outstanding amount and upon failure to do so threatening attachment of the Sadri Ka Garden.

110. A civil suit in the instant case has been filed by the plaintiff on the ground that the property in question which initially known as "Majhi Ka Bagh" later "Residency" and "Princess House" and as popularly known as "Raj Mehal" is personal property of Late Maharaja Sawai Man Singh, as recognized and declared in the covenant. The plaintiff Brigadier Bhawani Singh has filed a civil suit relying upon the covenant and also a registered gift deed dated 11th February 1957 executed by Maharaja Sawai Man Singh in favour of plaintiff Brigadier Bhawani Singh. The plaint is filed on the strength of covenant and not seeking any relief against covenant.

111. The material on record as relied by the counsel for respondents is that the civil suit is neither filed for identification of any property nor seeking declaration against the covenant. The

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contention of the plaintiff is that they are only relying upon covenant and rights accrued under the covenant as the defendants or the appellants despite their knowledge have not corrected the entries in the revenue record. The plaintiff placing reliance upon rights received under the Covenant has claimed relief against revenue entries with prayer to amend and correct them in accordance with covenant.

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112. The contention of learned Additional Advocate General is that the settlement has taken place in 1958 and same has not been challenged by the plaintiff. The issue with regard to bar under Article 363 of the Constitution, jurisdiction of civil Court for correction of entries in revenue record has been largely argued by learned Additional Advocate General. Additionally he argued on question of limitation and for which a specific issue has been framed by the trial Court.

113. In case of **Vadiyala Prabhakar Rao & Ors. v. The Government of Andhra Pradesh & Ors. : 2026 INSC 450** Hon'ble Supreme Court has observed that the entries in revenue record or jamabandi serves only a fiscal purpose and their primary function is to enable the persons whose name is mutated in the record to pay the land revenue in question. This issue was earlier considered in case of **Suraj Bhan Vs. Financial Commissioner (2007) 6 SCC 186, Jitendra singh Vs. State of MP: 2021 SCC OnLine SC 802, Bhimabai Mahadeo Kambekar vs. Arthur Import and Export Co. :(2019) 3 SCC 191 and Swarni vs. Inder Kaur :(1996) 6 SCC 223**.

114. A revenue record is not a document of title and does not confer any ownership or title upon the person whose name

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appears in it and same is affirmed by Hon'ble Supreme Court in case of **Gurunath Manohar Vs Nagesh Siddappa : (2007) 13 SCC 565 and State of Andhra Pradesh and Ors. versus M/s. Star Bone Mill & Fertiliser Co. : (2013) 9 SCC 319**, besides in case of **Suraj Bhan (supra) and Jitendra Singh** (supra).

115. A mutation entry does not create or extinguish title and absolutely no presumptive value regarding title and same is considered by Hon'ble Supreme Court in case of **Sawarni (supra), Bhima Bai (supra) and Balwant Singh Vs. Daulat Singh (D) by LRs (1997) 7 SCC 137**.

116. In case of **Sohal Lal Vs. Union of India and another (1957) 1 SCC 439** Hon'ble Supreme Court has observed that proceedings under Article 226 of the Constitution of India are not the appropriate forum for resolving serious dispute concerning question of fact and title to property. Investigating these claims is the proper function of the civil Court in a regularly constituted suit rather than of a Court exercising the prerogative to issue writs.

117. The law over the point is well settled that neither revenue record nor mutation entries prove any title in support of any party, as maintenance and custody of revenue record is exclusive domain of patwari or the revenue officer. The claim of appellants is based upon the entries in the revenue record or land settlement record finalised in 1958, but same is not a conclusive proof to establish rights of appellants and dent the case of respondents-plaintiff.

118. In the instant case the plaintiff has claimed that the property in question is known as Rajmahal and was earlier known as 'Princess House' and same is mentioned in covenant but the

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respondents have not corrected the revenue entries pursuant to covenant entered by father of plaintiff, with GOI. The plaintiff has neither filed a suit for identification of property nor for declaration of suit property to be a 'Princess House' and same is evident from the prayer clause of the plaint. A meaningful reading of the plaint is the basis of decision, in case there is any objection about maintainability of suit, an application under Order 7 Rule 11 CPC may be filed, but in the instant case no such application was filed.

119. Here in this case, after filing of the plaint, the appellant No.1 who is State Government has not filed written statement to raise objection about maintainability of suit. The appellant No.2/JDA is neither the owner nor title holder or a right holder in any manner, has filed a written statement but has not raised any objection about bar under Article 363 of Constitution in para No.9 of the written statement. The only pleading was that a covenant was executed under Article 363, therefore, plaintiff is not entitled to seek relief within parameter of Article 363 of the Constitution. Not a single statement has been mentioned in written statement about bar of jurisdiction under Article 363 of the Constitution of India. Probably this was rightly advised to appellant No.2 as appellant No.2 was not authorized to raise said ground as the land in question was recorded as revenue land, and revenue entries are recorded by the appellant No.1.

120. Appellant No.1 has not filed any written statement and, may be appellant No.1 does not want any controversy with regard to the subject matter. The conduct of appellant No.1 is sufficient to draw a conclusion that the appellant No.1 was neither serious before the trial Court nor before this Court at the time of filing of

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appeal as no ground has been raised in the appeal to contest present appeal about the bar contained under section under Article 363 of the Constitution of India.

121. In case of **Venkatesha and Anr. v. K.M. Venkatamuniyappa (Dead) through LRs. & Ors. :Civil Appeal No. 8991/2026** decided on 14th July 2026, Hon'ble Supreme Court has laid down that in a declaratory suit a decision cannot be based on grounds outside the pleadings of the parties. In case of **Razia Begum Vs. Sahebzadi Anwar Begum & Ors. : AIR 1958 SC 886 and Shivaji Balram Haibatti Vs. Avinash Maruti Panwar :MANU/SC1460/2017**, Hon'ble Supreme Court has laid down that in civil proceedings, the parties cannot travel beyond the pleadings.

122. In case of **Bachaj Nahar Vs. Nilima Mandal & Anr. reported in (2008) 17 SCC 491** Hon'ble Supreme Court has laid down following fundamental rules of civil procedure, to be observed by the Appellate Court to consider:-

> (i) No amount of evidence can be looked into, upon a plea, never put forward in the pleadings,
>
> (ii) A Court cannot make out a case not pleaded. A Court should confine its decision to the question raised in the pleadings,
>
> (iii) A question which did arise from the pleadings, which was not subject matter of an issue, cannot be decided by a Court,
>
> (iv) Any axniety should not be a ground to float the settled fundamental rules of civil procudure,

123. In case of **Venkatesh Construction Co. vs. Karnataka Vidyut Karkhane Ltd. :(2016) 4 SCC 119,** a three Judge Bench of Hon'ble Supreme Court has held that an Appellate Court may

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not interfere with the findings of the trial Court unless the findings recorded by the trial Court is erroneous or the trial Court has ignored the evidence on record.

124. In case of **Laxmisatan Engineering Works Ltd. versus CST :AIR 1968 SC 488** a three-Judge Bench of Hon'ble Supreme Court has clearly laid down that memo of appeal must contain the grounds for appeal. All Rules of procedure are intended to advance justice and not to defeat it. In order 41 CPC of CPC, the expression "appeal" and "memorandum of appeal" are used to denote two distinct things. In Wharton's Law Lexicon the word "appeal" is defined as the judicial examination of the decision by a higher Court of the decision of an inferior Court. The appeal is the judicial examination and the memorandum of appeal contains the grounds on which the judicial examination is invited.

125. A perusal of plaint filed by plaintiff indicate that in para No.1 the plaintiff has averred that the property in question is owned by plaintiff, earlier in the name of Maharaja Man Singh. In para Nos.3 & 4 the plaintiff has specifically mentioned about covenant and referred the property as "Princess House" in the covenant. In para No.4 the plaintiff has specifically stated that the said property was gifted to the plaintiff vide registered gift deed dated 11th February 1957. The plaintiff was recognized as Ruler in place of Maharaja Man Singh vide Gazette notification dated 12th July 1970.

126. The plaintiff has further stated a fact which is very relevant in the instant case is that in 1973 an acquisition proceeding was initiated by the then UIT Jaipur (Now JDA and appellant No.2) and a final award has been passed in 1993. The plaintiff has further stated a fact that after acquisition, remaining property of 54 Bigha

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18 Biswa was recognized as property of the plaintiff by the appellants in various documents, some of them exhibited by PW1 in his evidence. The plaintiff has filed following table to show that out of 120 Bigha 14 Biswa land, the appellants have acquired 65 Bigha 16 Biswa of land and left 54 Bigha 18 Biswa in the title and possession of plaintiff. The table has been reproduced as under:-

S.N.	KHASRA NO.	TOTAL AREA OF ORIGINAL KHASRA NO. ROR AREA (BIGA_BISWA)	SOIL CLASS	KHASRA UNDER ACQUISTION	AREA OF KHASRA UNDER ACQUISTION	AREA OF KHASRA EXCLUDED FROM ACQUISTION	TERMIM K.N.
1.	172	14-12	G. M. Aabadi	172	13-04	1-08	172/454
2.	179	4-05	G.M. Maidan	179	4-05	-----	----
3.	180	0-18	G.M. Sadak	180	0-08	0-10	180/457
4.	181	8-08	G.M. Maidan	181	8-08	-----	-----
5.	182	0-15	G.M. Sadak	182	0-15	----	-----
6.	183	3-07	G.M. Sadak	183	2-16	0-11	183/458
7.	184	8-10	G.M. Maidan	184	4-13	3-17	184/460
8.	185	2-13	G.M. Maidan	185	2-03	0-10	185/462
9.	186	15-04	G.M. Aabadi	----	---	15-04	186
10.	187	0-07	G.M. Sadak	187	0-03	0-04	187/465
11.	188	3-13	G.M. Aabadi	188	3-13	----	-----
12.	189	0-04	G.M. Aabadi	189	0-04	----	-----
13.	190	0-03	G.M. Rasta	190	0-03	---	-----
14.	191	1-15	G.M. Maidan	191	0-19	0-16	191/466
15.	192	0-11	G.M. Aabadi	----	---	0-11	192
16.	193	1-18	G.M. Sadak	193	1-11	0-07	193/469
17.	194	8-10	G.M. Maidan	194	7-07	1-03	194/470
18.	195	2-10	G.M. Sadak	195	0-08	2-02	195/473
19.	196	5-08	G.M. Maidan	196	5-08	----	-----
20.	197	0-07	G.M. Sadak	197	0-07	----	-----
21.	198	9-07	G.M. Maidan	198	9-01	0-06	198/474
22.	227	7-02	G.M. Aabadi	-----	-----	7-02	227
23.	229	0-01	G.M. well	------	-----	0-01	229
24.	230	20-06	G.M. Aabadi	------	-----	20-06	230
Total	**Count 24**	**120-14**			**65-16**	**54-18**	**Count 16**

127. The issue with regard to land acquisition of 65 Bigha 16 Biswa has travelled upto Hon'ble Supreme Court and in case of **Gandhigarh Nirman Sehkari Samiti versus State of**

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Rajasthan and others AIR 1994 SC 2329 Hon'ble Supreme Court has observed as under:-

> "3. The land is popularly known as Rambagh area and **Princes House or Raj Mahal area**. According to the appellants the lands were private properties of Maharaja of Jaipur. Gandhi Grah Nirman Sahkari Samiti (Samiti), the appellant, acquired the vacant parcels of the land situated in Rambagh Palace and in the compound of Raj Mahal comprising 3,49,000 sq. yards for a sum of Rs.1,02,00,000 by way of three deeds of conveyance executed on March 29, 1972 and registered on April 3, 1972.
> 4. After the purchase of the land, the Samiti prepared a development plan of the land according to which 500 residential plots of different sizes were to be developed on the land. The Samiti on June 24, 1972 submitted the development plan to the Urban Improvement Trust, Jaipur (the Trust) for sanction. The Trust raised objections and the matter was referred to the State Government. The State Government further raised objections and as such the matter remained under correspondence for quite some time.
> 5. On March 24, 1973 the State Government issued, notice under Section 52(2) of the Act wherein the owners of the land an other interested persons were called upon to show cause as to why the land be not acquired. **A separate notice dated March 26, 1973 was sent to the appellant Bhawani Singh**. Objections were filed by the Samiti as well as by Bhawani Singh. The Officer-on-Special Duty, Town Planning Department, Government of Rajasthan heard the objections and submitted his report dated April 2, 1974 for the consideration of the State Government. The State Government rejected the objections and issued two notifications dated July 11, 1974 under Section 52(1) of the Act which were published in the Rajasthan Gazette dated September 27, 1974. It was at that stage that the appellants challenged the acquisition by way of writ petitions before the High Court."

128. Aforementioned facts which are directly related to current land demonstrate that Hon'ble Supreme Court has referred the land as Princess House or Rajmahal area. There are no objections by the State of Rajasthan or any other party including JDA to

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show that the land in question is not known as Princess House. The factum of land acquisition proceeding is not a by chance or a mistake as the State Government has neither cancelled the award nor recalled the award on the ground that the land in question belong to State Government and was legally not required to acquire land when Government owns the same.

129. The admitted facts of the case clearly indicate that 65 Bigha 16 Bigha land which was acquired vide notice dated 24/26 March 1973 has already mutated in favour of the appellant No.2 but remaining 54 Bigha and 18 Biswa land has never been mutated in the name of appellant No.2/ defendant No.2. The land has been shown as Government land but Abadi land. The current suit is for remaining 54 Bigha and 18 Biswa of land, which is part of land parcel of 120 Bigha 14 Biswa and referred in case of **Gandhigarh Nirman Sehkari Samiti** (Supra), by Hon'ble Supreme Court as Princess House. There is no denial to said findings except an argument that the reference of facts by Hon'ble Supreme Court is not an admitted position.

130. In case of **State of Tamil Nadu Vs. K Shyam Sundar : (2011) 11 SCR 1094**, A 3 Judge Bench of Hon'ble Supreme Court held that unless it is found that the act done by the authority earlier in existence is earlier contrary to statutory provisions, is unreasonable or is against public interest, the State should not change its stand merely because the other political party has come into power. A political agenda of an individual or a political party should not be subversive of rule of law.

131. While placing reliance upon judgment in case of **State of Punjab & Another Vs. Gurdayal Singh and Ors. : AIR 1980**

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SC 319 wherein it was held that when power is exercised in bad faith to attain ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal, it is called colourable exercise of power. The actions becomes bad where true object is to reach an end different from the one for which the power is entrusted, guided by an extraneous consideration whether good or bad but irrelevant to the entrustment. When the custodian of power is influenced in exercise of its power by considerations outside those for promotion of which the power is vested, the actions becomes bad for the reason that power has not been exercised bona fide for the end design.

132. The arguments advanced by learned Additional Advocate General are against the observation in the Para No.3 of the judgment in the case of **Gandhigarh Nirman Sehkari Samiti Ltd.** (supra), as findings are binding upon appellants. Moreover the State of Rajasthan has neither pleaded nor raised an objection that the property in question is not the Princess House or not declared as private property under the covenant. Till 1993, there were no quarrel about 120 Bigha and 14 Biswa land parcel in 24 khasras and at no point the appellants have claimed said property as Government property. The appellants have treated said property as personal properties under the covenant to Maharaja Man Singh, thus, the stand of the appellants is just like change according to situation and raise ground as per desire of master.

133. The respondents have also filed Ex.11 (JDA plan/map for Shubham Enclave) in support of his claim that the JDA has always treated the remaining 54 Bigha 18 Biswa land as property of the plaintiff. There are other documents from Ex.1 to Ex.84 to show

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that the property in question including open land belongs to plaintiff and same is known as Princess House or the Rajmahal. There is no justification with learned Additional Advocate General to counter the admission prior to institution of current litigation.

134. Learned AAG has also referred a notification dated 3rd July 1992 under Section 4 of the Land Acquisition Act for acquisition of khasra Nos.181, 182, 183, 185, 196, 197 total 20 Bigha 18 Biswa open land of Village Hathroi along with acquisition of khasra Nos.178, 191, 194 and 198 total 21 Bigha 7 Biswa open land in Rajmahal Palace (Not part of record). The notification was published in Rajasthan Gazette Extraordinary dated 30th October 1993 and as per learned AAG on 20th October 1995 the Land Acquisition Officer (LAO) considering the land revenue record of said Khasra Nos. 178, 191, 194, 198, 181, 182, 183, 185, 196 and 197 has passed an award that the land in question is Government land and it vests in JDA so no compensation is payable.(All these documents are neither filed before trial Court nor a ground either in written statement on in memo of appeal).

135. Learned AAG has raised an objection that the respondents-plaintiffs have not challenged the award, and without challenge to award passed by LAO, a civil relief in respect of same land cannot be granted. These documents were in the power and possession of the appellants but they were not filed before the trial Court and the reasons as assigned by us hereinabove indicate that these documents were not taken on record which were filed with the application under Order 41 Rule 27 CPC on 21 September 2016. Neither of these documents are part of written statement nor a ground is raised in written statement. Similarly neither of these

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documents are part of memo of appeal nor a ground is raised in memo of appeal, therefore the arguments advanced by learned AAG are not supported from any of the material on record.

136. In case of **Kali Prasad Agarwall and others Vs. Bharat Cooking Coal Limited and others AIR 1989 SC 1530 and Kanju Kesavan Vs. M.M. Philip & Ors. (1964) 3 SCR 6334,** it was held that the parties went to trial, fully understanding the legal position and knowing fully well what the appellants are required to prove. Thus, in absence of pleading both in written statement and memo of appeal, the grounds raised by the AAG cannot be looked into, as it is too late for him to raise without seeking amendment in pleadings.

137. Now comes the question whether the civil suit is filed for claiming a right with interpretation or right against the covenant. The judgments referred by learned AAG and learned counsel for the respondents were scanned by us and we are well convinced that Article 363 of the Constitution bars the jurisdiction of Court. In any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provision of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other instrument, is not subject matter of dispute in wake of bar. In order to understand the issue better, we have to refer a previous litigation between the same parties, which has travelled up to Hon'ble Supreme Court and the judgment in said case has been relied by both the parties, i.e. judgment in case of

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Jagat Singh Vs. JDA: S.B. Civil Second Appeal No.12/1987 (Judgment dated 7th September 1988).

138. In case of **Jagat Singh Vs. JDA** (supra) a plea of bar under Article 363 of Constitution was raised before the trial Court and on basis of said, an issue was framed. Ultimately after considering the legal position in case of **Madan Mohan Maharaj Vs. State of Rajasthan and others : AIR 1978 Raj. 112** in relation to the private properties of the ex-Ruler of the State of Karauli after referring the earlier decision in case of **State of Rajasthan Vs. Sawai Jai Singh ji**, it was held that in order to shut down the jurisdiction of the Court, the dispute must be real and bona fide dispute and not an illusory one. A Coordinate Bench has also considered judgment in case of **Madhav Rao Sindhia Vs. Union of India : AIR 1971 SC 530**.

139. The facts of the case in case of **Jagat Singh Vs. JDA** (supra) demonstrate that, the plaintiff has claimed that the property was personal property known as Natanio Ka Bag of late Shri Swami Man Singh, former Ruler of State of Jaipur and same was recognized as personal property of said Ruler in the list of private properties prepared in accordance with Article XII of the covenant entered into by the Ruler of the State of Jaipur in March 1949. Thereafter Sawai Mansingh has registered a gift deed dated 5th May 1956 in favour of Jagat Singh but the defendant (UIT later JDA) entered in the civil suit property and taking step to auction a portion of land attached to said property. The defendant contested the suit and claimed that open land lying outside the compound wall at *natanio ka bagh (known also as Jai Mahal)* was not the private property of late Shri Sawai Man Singh and that the

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said propery which belong to State and vested in UIT and Trust is entitled to divide the land into plots and sale the same. A defense of Article 363 of the Constitution was taken by UIT.

140. In case of **Satish Kumar Pareek Vs. State of Rajasthan and Ors. (DB CWP No. 7133/2004)**, a Division Bench of this Court while rejecting a PIL filed against Lft. Col. Bhawani Singh (plaintiff of present suit) has observed as under:-

> "16. That Badal Mahal is a part of city palace does not seem to be in controversy at all. It does not seem to us, prima facie, to be subject to any of the conditions set out above. A case was sought to be set up by the counsel for the petitioner as well as the Additional Government Counsel and the counsel for the Municipal Corporation that Badal Mahal is part of Jai Niwas Gardens and is required to be used for ceremonial and state functions of the Raj Pramukh and is to be further required to be Maintained by the Rajasthan Government for the said purpose and, therefore, not a private property of respondent no.7.
> 17. Firstly, there is no decisive material on record on the basis of which it can be held that Badal Mahal is a part of Jai Niwas Gardens. Secondly, and more importantly, even if it be assumed that Badal Mahal is a part of Jai Niwas Gardens, it does not cease to be family property of the ruler of Jaipur under the covenant. The only contention with regard to Jai Niwas Gardens is that it is to be used for ceremonial and state functions of the Raj Pramukh and is be maintained by the Rajasthan Government for the said purpose. The property having already been declared as family property of the ruler of Jaipur state, the said declaration is not at all affected by clause (ii) aforenoted.
> 18. Moreover, no material has been placed on record by the petitioner even to indicate, prima-facie, that Badal Mahal has been declared as an ancient monument or architectural site under the Rajasthan Monuments, Architectural Sites and Antiquities Act, 1961 or any other law. Except making a bald statement that Badal Mahal is an ancient monument and that the administrator of Municipal Corporation once desired the said monument to be declared as ancient monument,

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there is nothing to show that the said monument has been declared as such. The copy of khewat Khasra placed on record by the petitioner which according to him shows that the subject property is a government was property does not support the case of the petitioner or the state government that it is a government property. The khewat khasra was prepared obviously when the Jaipur state was in existence. The said document has paled into insignificance in the light of the covenant entered into between the Government of India and the erstwhile ruler of Jaipur whereby the city palace has been declared to be family property of the Jaipur Ruler, of course with some conditions noticed above, which however, do not affect the declaration so made."

141. In said writ petition the respondent No.7 Lft. Col. Bhawani Singh has claimed 'Badal Mahal', as personal property under the covenant though petitioner, Government and Municipal Corporation have pleaded to be Government property (part of Jai Niwas Garden) and so recorded in various record as part of khasra Nos. 531, 532, 533. The Division Bench has rejected contentions of all and accepted the defense and right of respondent No.7 Lft. Col. Bhawani Singh on basis of covenant dated 13th March 1949.

129. In the instant case, after a successful acquisition of 65 Bigha 16 Biswa of land out of land parcel of 120 Bigha 14 Biswa, the appellants/defendants initially treated remaining land as private property but land in 1992 or 1993 or in 1995 have treated same as Government land. The admission of appellants/defendants except in order dated 20.10.1995 passed by LAO, till 1995 was favourable to plaintiff and at no point of time before 1992, the appellants have ever challenged and claimed the remaining 54 bigha 18 biswa land as Government land. Thus, till 1992 except entries in revenue record, there was no threat or apprehension to plaintiff about said land.

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142. The stand of plaintiff is somewhat more solid than in case of **Jagat Singh Vs. JDA** (supra). Here in this case the dispute is about adjoining land to Princess House (Raj Mahal), as the land acquisition proceeding of 65 Bigha 16 Biswa carried out by the appellants was concluded in 1993 but actions thereafter clearly reflect that the appellants have changed their stand and in order to acquire remaining property of the plaintiff, they have passed a zero award and treated the property to be a Government property. Whatever be the case, present case of plaintiff/respondent is on far better footing than the case of **Jagat Singh** (supra).

143. Admittedly, the appellants have issued a notification on 03.07.1992 and later an award 20.10.1995, but no personal notices were served upon plaintiff or interest holders in said remaining land (20 bigha 18 biswa and 21 bigha 7 biswa). The constructed portion (Rajmahal) which is khasra No.186 area 15 bigha 04 biswa (Gair Mumkin Abadi) is not part of award dated 20.10.1995 or notification dated 03.07.1992. It clearly means that no proceedings (even in second acquisition vide notification dated 03.07.1992), following land has not been included (There is no acquisition in respect of following land and handing over to appellant No.2):-

Khasra No.	Soil Class	Area left after 1st acquisition	Tarmin Khasra No.
172	G.M. Abadi	1-08	172/454
180	G.M. Sadak	0-10	180/457
186	G.M. Abadi	15-04	186
187	G.M. Sadak	0-04	187/465
192	G.M. Abadi	1-11	192
193	G.M. Sadak	0-07	193/469
195	G.M. Sadak	2-02	195/473
227	G.M. Abadi	7-02	227
229	G.M. Abadi	2-01	229

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230	G.M. Abadi	20-06	230

144. Aforesaid is sufficient to demonstrate that the case can be divided in following three classes:-

(i) Land of 65 bigha 16 biswa acquired by appellants and possession has been taken in 1993 and an award is pending reference.

(ii) Out of remaining land, some portion of land (20 bigha 18 biswa and 21 bigha 7 biswa) a notification dated 03.07.1992 was issued and a zero award is passed on 20.10.1995 treating land as Government land. (No ground in pleadings and no defence of appellants)

(iii) Remaining land not included in categories (i) and (ii), as acquired by way of 1st admitted acquisition and IInd acquisition (not admitted).

145. Herein, it is important to note that before 20.10.1995 the appellants have not disclosed and claimed the land mentioned in notification dated 03.07.1992 as Government land. In case of **JDA Vs. Mahesh Sharma and Anr. : (2010) 9 SCC 782**, Hon'ble Supreme Court has held that the Government cannot and does not acquire its own interest.

146. Admittedly, both *nataniyo ka bagh* and Princess House are part of covenant and as per learned AAG Bungalow No. 7 in Civil Lines, Jaipur is known as Princess House, which has not been supported by any document except Ex.A-4. The submissions of the AAG are non-convincing on the ground that if a Princess House was mentioned in covenant then there should have been a bungalow number, if there was any demarkation. Several other bungalow numbers were mentioned in covenant, means whatever

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was property same was known by its name and not by bunglow number. The argument of the learned AAG are self contradictory, and not been supported from any material. Even the arguments advanced by appellants indicate that they have open ended case and they want to argue just to damage the case of the plaintiff and not to support the case of appellants. There are certain admissions and actions attached with Government functioning and the arguments advanced by the learned AAG indicate that Government kept changing its own stand in case against the plaintiff. The only impression which we gather is that prior to 1995 the system of governance was not good or may be somewhat favorable to the plaintiff but after 1995 the governance has changed and it has began to reform the system.

147. The material on record does not justify the arguments of learned AAG rather the ground raised by learned AAG are not part of pleadings which clearly indicate that the Government always treated current litigation in free style manner and argued anything, as per convenience. The appellants have not filed any document or raised any ground before the Civil Court. The principles to argue a writ petition or a civil appeal are different and both governed on different principles. In a writ petition like **Krishna Kumari** (supra), the issue was different and same ground cannot be taken in a civil appeal, like present one where the matter travelled after factual adjudication by a Civil Court.

148. Having considered the entire material and the legal position as explained hereinabove, not a single document is placed on record to show that Raj Mahal is not the Princess House or same is not known as residency or Manjhi Ka Bagh. A Palace normally

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includes attached an open land with lush green gardens, outhouses, garages and barracks for cavalry, therefore the composition of palace has to be understood in form of palace and not in form of a bungalow. If the covenant contains the word 'Princess House' it means it has some significance with a palatial structure along with all other amenities attached with Princess House.

149. The material on record reflect that total 120 Bigha 14 Biswa land was part of Princess House which lately known as Raj Mahal Palace. The identification of property was never challenged by the appellants but in present appeal, by way of arguments learned AAG has questioned the Rajmahal Palace to be known as Princess House. Even from entire record, not a word is mentioned about a dispute related to identification of property. How can a party to the proceeding came to know that the appellants are treating the Rajmahal and Princess House as distinct properties, unless same is raised in written statement.

150. Learned AAG has stressed on two specific terms: Firstly illusory dispute or real dispute. In case of **Jagat Singh Vs. JDA** (supra) a Coordinate Bench has considered a test considering judgment in case of **State of Rajasthan and Another Vs. Sawai Tej Singh :AIR 1969 Raj. 52 (DB)** wherein two views were expressed. First view is that however illusory the dispute may be, it is not for the Court of law to decide it because dispute has been raised whereas other view is that the Court of law should examine whether prima facie there is no valid ground for raising the dispute and when there is no valid ground the Court may hold that no dispute really exists.

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151. In case of adoption of first view it may in certain circumstances result in such injustice that the Court of law may allow shudder to construe Article 363 in such a manner. For example, a Ruler may file a suit for ejectment of a trespasser from a property which undisputably belong to him and such person raises his defence that it is not the private property of the Ruler. Would the Court of law be justified in rejecting the claim of the Ruler on the ground that it has no jurisdiction to entertain it because of the provision contained in Article 363 of the Constitution? Can the Court of law not take into consideration that the defence raised by him is illusory and as there is no real dispute raised for the application of Article 363, the Court jurisdiction is not ousted. Can such person be permitted to say that whatever may be the nature of dispute it is still there and if an inquiry is embarked upon for examining the merits of the dispute, it cannot be permitted under Article 363 of the Constitution.

152. After referring the judgments of English Courts and while holding that although strictly speaking the principles contained in those cases were not strictly applicable to the cases under consideration before this Court but on the basis of said principle, a Coordinate Bench has found that if on primary investigation the dispute is of nature that there is no limit how far the investigation is to go in order to determine whether in truth the defendant has a defense.

153. Having considered the test laid down in case of **Jagat Singh Vs. JDA** (supra), which is fully applicable in the instant case, the matter requires examination. Both learned AAG and learned

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counsel for the respondents have placed reliance upon judgment in case of **Jagat Singh Vs. JDA** (supra).

154. In the entire written statement, nowhere appellant No. 2 JDA has pleaded that Rajmahal is not "Princess House". In reply to para Nos.3 and 4 of plaint, the appellant No. 2 (defendant No. 2) has not specifically denied that the Manjhi Ka Bagh, Residency, Princess House and Rajmahal are one and same property. It is also admitted that in Khasra No.186, there are some structures and same is in possession of plaintiff as licensee but there is no document on record to show how license was created and what are terms of license. Means, the case and facts narrated by plaintiff has been denied for sake of denial but no specific assertive claim in written statement by defendant number 2 JDA.

155. In order to presume a real dispute about identification of a property, mentioned in covenant, it is necessary there has to be specific denial and counter claim with proof. In the instant case, neither is there any specific denial nor specific assertive claim in pleadings of the appellants. In absence of both, we have no hesitation to say that the arguments and submissions of learned AAG, are without any foundational support.

156. The entire material as referred by us clearly indicate that even if we consider order dated 20th October 1995 passed by the Land Acquisition Officer, even then there is no case of defense for appellants to come and plead that the land in question was not the private property of Maharaja Man Singh. The property in question is always known as Princess House, which has also been known as Residency or Rajmahal and there is no doubt about this fact.

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157. The defense raised by the learned AAG during course of arguments is just an illusory and raised with an object to defeat the claim of the plaintiff. If the grounds raised by him are allowed the only option before us to remit back the civil suit to the trial Court for fresh consideration. The purpose of the argument is only to set aside the judgment rather to frustrate and reject the plaint of the plaintiff. The purpose and object behind arguments are evident from the fact that there is no defense with the appellant on issue No.1 & 2. The maximum part of the arguments is based upon bar under Article 363 of the Constitution of India and also reiteration of the revenue record in the name of the appellants.

158. The plaintiff has also referred a letter dated 19th September 1995, (Ex.21) addressed to the then Chief Minister Hon'ble Shri Bhairon Singhji for correction of entries in the revenue record. The letter clearly indicate that plaintiff has reiterated that Rajmahal Palace along with land adjoining has been his personal and private property and all rights, title and interest along with possession vest him for more than 38 years in accordance with covenant entered in between Government of India and father of plaintiff in year 1949. The plaintiff has also stated about registered gift deed and further land acquisition proceedings and award dated 19th October 1993 in Land Acquisition Case (LAC) No.3/1973 by LAO for UIT/JDA (appellant No.2). The plaintiff has raised his grievance about the revenue record, by reflecting the properties as Siwaichak in mutation.

159. On basis of said letter, the matter has been sent to District Collector, Jaipur by the Revenue Department, Government of Rajasthan for examination and the District Collector, Jaipur has

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replied vide letter dated 3rd June 1996. The letter dated 3rd June 1996, which has been exhibited as Ex.28 indicate that in all land revenue records the land/property was registered as private property of former Ruler of Jaipur. The District Collector has also replied that the acquired land of 61 Bigha 11 Biswa has been registered in the name of JDA and remaining land is in possession of plaintiff. The District Collector has suggested that a revenue suit for correction of entries, may be filed by the plaintiff. This letter is based upon a report prepared by the Revenue Officer as District Collector is Chief District Revenue Officer and same is binding upon the appellants. No one can deny, a report submitted to the Government after examination of revenue record.

160. The letter is in consonance with land acquisition of 65 Bigha 16 Biswa out of 120 Bigha 14 Biswa of land, as claimed by the plaintiff. The letter Ex. 28 supports and cemented the arguments of the learned counsel for the respondents and case of plaintiff is that remaining 54 Bigha 18 Biswa land is private property of plaintiff and same was entered in land revenue record and moreover the possession is of plaintiff. The report of the Chief Land Revenue Officer support the case of plaintiff and after said report the appellants are not free to raise contention about Article 363 of Constitution as same is an illusory dispute raised by the appellants during course of arguments.

161. Learned AAG has no justification to say that the District Collector, Jaipur, has submitted report dated 3rd June 1996 in connivance with plaintiff. The matter has been investigated at the behest the then Chief Minister and if the matter is investigated and the report is received in favour of the plaintiff then the report

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has to be read in favour of the plaintiff and same is sufficient to dent the entire appeal of the appellants and it is conclusively proved that the 54 Bigha 18 Biswa land belongs to plaintiff and it is a private land which was earlier demarked in the name of Ruler of Jaipur as a private property in the covenant and by a registered gift deed in 1957, said property was gifted to the plaintiff.

161. The entire material placed on record clearly demonstrate that neither is there any dispute about demarcation of property nor any dispute which is touching upon the interpretation of covenant entered between former Ruler of Jaipur and the Government of India. The appellants have not raised any objection before the trial Court for invoking of bar under Article 363 of Constitution. The appellants have not raised any ground in memo of appeal. The appellants have acquired 65 Bigha 16 Biswa land out of 120 Bigha 14 Biswa, presuming that entire land parcel is private property of plaintiff. The matter has travelled up to Hon'ble Supreme Court, wherein also the land in question was proved to be Princess House.

162. The appellants have never raised said dispute at any point of time before the arguments or before filing of application in year 2016 which means the appellants have developed a new ground so as to frustrate the claim of plaintiff. The defense raised by the appellants is not only malicious but it is an illusory defense so that Court may consider bar under Article 363 of Constitution in an emotional way and just accept the appeal of the appellants.

163. The dispute in case of **Sawai Tej Singh ji Vs. Union of India** (supra) was entirely different than present dispute. Similarly in case of **Karan Singh Vs. J & K** (supra) the relief was

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claimed contrary to the covenant and so in case of **Dropadi Devi Vs. Union of India** (supra). In case of **State of MP and Usha Devi** (supra) again the demarcation and the rights were under question and the State Government has directed for handing over the possession. Thus, the dispute raised in case of **State of MP and Usha Devi** (supra), **Dropadi Devi Vs. Union of India** (supra), **Karan Singh Vs. J & K** (supra) and **Sawai Tej Singh ji Vs. Union of India** (supra) are totally different than the present dispute.

164. The present dispute is a creation after 1992 onwards but there was no dispute prior to said dates. The case of plaintiff has been supported even from the documents of the appellants and further the appellants have selectively raised too many grounds without any pleading, thus, the judgments referred by learned AAG are not applicable upon the facts of the present case.

165. This Court has considered revision petitions of the State of Rajasthan, filed after dismissal of application under Order VII Rule 11 CPC in case of **State of Rajasthan and another versus Maharaja Sawai Man Singh-II Museum Trust, City Palace Jaipur** (supra), wherein a suit for possession has been filed for the properties, left to be used by the State Government. There is no dispute about the title and ownership but the covenant prescribed that the properties have to be preserved for future successors and same will be used by the State Government. This Court considering the fact has ruled that a suit for possession is not maintainable against the terms of covenant, therefore, the facts of said case and present case are totally different, and same is not a precedent to be applied in the instant case.

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166. Having considered the entirety of facts and the material as placed on record, it is evident that Article 363 has no application in the instant case as the principles considered and discussed in case of **Jagat Singh** (supra) are fully applicable in support of contentions of the plaintiff. Article 363 of the Constitution does not bar filing of a civil suit in totality, thus, the objection raised by learned AAG are hereby rejected to the extent that the trial Court has not committed any error of jurisdiction by entertaining a civil suit contrary to bar contained under Article 363 of the Constitution of India.

Jurisdiction of Civil Court vis-a-vis Revenue Court

167. Learned AAG has raised an objection that the land in question is a revenue land and as per Section 207 of Rajasthan Tenancy Act, the Revenue Court has jurisdiction to pass a decree for correction of entries whereas learned counsel for the respondents has submitted that after the letter of Collector (Ex.28) a revenue suit was filed before SDO-I, Jaipur but same was returned on the ground that the land in question is abadi land (urban land) and the Revenue Court has no jurisdiction to entertain suit relating to entries in relation to urban land.

168. The claim of the plaintiff is based upon the rights under the covenant, as the property "Princess House" was identified as private property of late Maharaja Man Singh, which was later gifted to the plaintiff Brigadier Bhawani Singh. The land in question is recorded as *gair mumkin abadi/gair mumkin maidan/gair mumkin sarak*. There are total 24 khasras (counts) and total area of land is 120 Bigha 14 Biswa. The appellants including UIT, Jaipur has initiated a land acquisition proceeding in

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1972-73 and by way of award in 1993, 65 Bigha 16 Biswa land has been acquired. The remaining land has remained in the possession of plaintiff. The land in question is shown as abadi land in abadi area. The letter of District Collector (Ex.28) only suggest that a revenue suit has to be filed for correction of entries though the letter of District Collector also demonstrate that the land in question is a private land of former Ruler of Jaipur means Maharaja Man Singh. The title of land has been passed by Maharaja Man Singh to Brigadier Bhawani Singh (plaintiff) by way of registered gift deed.

169. After the land acquisition, the issue remains about remaining land and admittedly the revenue entries were transferred in the name of JDA in respect of acquired land of 65 Bigha 16 Biswa. The documents exhibited by the plaintiff indicate that a Shubham Enclave Scheme was developed by JDA wherein the remaining land has been shown as the land of plaintiff. In other documents as placed on record by plaintiff and also in the evidence of DW1 and DW2, the land has been termed as land of plaintiff, therefore there is no doubt about the fact that 54 Bigha 18 Biswa land is abadi land and it belong to plaintiff.

170. The Revenue Court (SDO-I, Jaipur) has returned the suit filed by the plaintiff only on the ground that the Revenue Court has no jurisdiction as the land in question is abadi land. The Revenue Suit No. 124/1997, titled as **Brigadier Sawai Bhawani Singh versus State of Rajasthan and others** was decided by the SDO Jaipur on 28th September 2002. In the judgment which has been exhibited before the trial Court as Ex. 61, The SDO-I, Jaipur has also found prima facie case of plaintiff but feeling

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limitation as the land in question is abadi land, has returned the plaint for adjudication by Civil Court. The judgment passed by the SDO is also a finding under Sections 88, 89 and 91 of Rajasthan Tenancy Act read with Sections 125 of Land Revenue Act and it is against the appellants. When the Revenue Court has returned the plaint on the ground that it lacks jurisdiction then the plaintiff has no option except to approach Civil Court. It has also been apprised that RAA was approached but the result remained the same.

171. One more document which has been placed on record is Ex.67, whereby the appellant No.2 has returned the construction map of the respondent in relation to Khasra Nos. 180, 186, 187, 191, 192, 194, 195 and 198 on the ground that first demarcation of Khasra No. 186 has to be carried out and completed, means nowhere the tittle of plaintiff was under a deep cloud. The material on record clearly reflect that whatever has been filed by the plaintiff supports the case that the land in question belongs to respondents-plaintiff and it is an abadi (urban) land.

172. In view of the material placed on record, the arguments advanced by learned AAG are not tenable and a civil Court has jurisdiction to consider and decide the dispute raised by the plaintiff regarding declaration in respect of abadi land.

Objection about delay and barred by law of limitation

173. Learned AAG has raised an objection about filing of civil suit after a substantial delay and submitted that the suit instituted by the respondent-plaintiff in year 2002 is ex facie barred by limitation in terms of Article 58 of the Limitation Act. He also submitted that the entire suit rests upon terms of covenant, which was executed in 1949 and thereafter a process of

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settlement undertaken in 1958 whereas the current suit is filed in 2002.

174. On the contrary, the counsel for the respondents have placed reliance upon judgment in cases of **Vidya Devi versus State of Himachal Pradesh and others :(2020) 2 SCC 569** and **Shakti Bhog Food Industry versus Central Bank of India and Anr. : (2020) 17 SCC 260**.

175. The appellant No.1 has not filed any written statement to raise any objection about the delay in institution of civil suit whereas defendant No.2/appellant No.2 has filed written statement raising an objection about delay in filing civil suit. On basis of specific objection in para No.24 about the settlement taken place in 1958 and institution of suit after 45 years. Not a single word is mentioned about accrual of cause of action in 1949, which means learned AAG has filed not only written submission contrary to the pleadings but also advanced submissions beyond the rule of pleadings. No Court can enter into fresh ground unless same is suppoted by pleadings. It is a civil case and Civil Procedure Code is already there which provides for filing of written statement and taking objections about the maintainability, jurisdiction or institution of suit.

176. The trial Court has framed issue No.6 on ground of limitation and decided same against the appellants. The finding on issue No.6 indicate that the appellant-defendant has raised only objection about accrual of cause of action based upon settlement undertaken in 1958 which means the issue relating to covenant executed in 1949 has not been raised by the appellant. Now without amendment in the written statement, fresh pleas or

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grounds has been raised by learned AAG on behalf of the appellant- defendants.

177. The material on record indicate that the plaintiff has filed and submitted Ex.68 an award No.3/1973 passed by the Land Acquisition Officer on 19th October 1993 in respect of 65 Bigha 16 Biswa land out of land parcel of 120 Bigha 14 Biswa owned by the plaintiff as his personal property. The appellants have undertaken a land acquisition proceeding of 65 Bigha 16 Biswa land out of the said land parcel in 1972-73 wherein the appellants have admitted that the land belongs to plaintiff and based upon this, the notification for intention to acquire and further award has been passed. The matter has already been travelled upto Hon'ble Supreme Court, which is evident from judgment in case of **Gandhi Greh Nirman Sehkari Samiti Ltd. Vs. State of Rajasthan : AIR 1994 SC 2329**. This means there was no threat to the plaintiff till 19th October 1993 and till first acquisition proceeding of 65 Bigha 16 Biswa. The appellants have never shown their intention that they are not treating the land parcel of 120 Bigha 14 Biswa in the ownership and title of plaintiff, rather appellants are presuming that entire land parcel belong to plaintiff.

178. The law over the Limitation Act is well defined and a party instituting a civil suit is required to file same within the period of limitation prescribed under the Limitation Act. A cause of action has not been defined in CPC but normally it is bundle of facts mentioned in the plaint. A party on basis of existence of a legal right and violation of same is entitled to file a civil suit to redress about violation of said legal right, provided same is not barred under the law.

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179. In case of **M/s. Sonic Surgical Vs. National Insurance Company Limited : MANU/SC/1764/2009**, Hon'ble Supreme Court has held that a cause of action means that bundle of facts which give rise to right or liberty and which enables a party to file a civil suit. A cause of action is a sine qua non for ultimate success of suit and burden of proof of cause of action lies upon the party who asserts the cause of action. A cause of action is pivot of the suit and the entire suit revolves around it.

180. Based upon cause of action, we have to examine the plaint in order to find out whether the suit is filed within period of limitation or not and issue No.6 was decided in right perspective by the trial Court or not.

181. The plaintiff in para No.7 has mentioned initiation of land acquisition proceedings in 1973 and further passing of award in 1993 (Ex. 68), considering plaintiff as land and title holder. A reference is also filed against the award and same is pending before Civil Judge (Senior Division), Jaipur City. In para No.8 the plaintiff has stated that remaining land left after acquisition proceedings concluded in 1993. The counsel for the plaintiff-respondents has also argued that the possession to said 65 Bigha 16 Biswa land was taken in 1993 and mutation was opened in 1993 in favour of the appellant No.2. This fact is an admitted fact as same has not been rebutted from any of the material.

182. In para No.9 of the plaint, the plaintiff has referred the covenant and rights of the plaintiff and further non correction of entries by the defendants. In para No. 10 the plaintiff has mentioned that after knowledge of incorrect revenue record, the plaintiff has submitted a letter dated 19 September 1995 to the

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then Chief Minister and pursuant to said latter, the matter was enquired and District Collector, Jaipur vide letter dated 3rd June 1996 has responded and acknowledged the personal property of the plaintiff.

183. In para No.11, the plaintiff has specifically referred khasra No.186 wherein main building of Rajmahal is situated and khasra No.172 and 180 wherein staff quarters are situated. The plaintiff has also referred khasra No. 183, 184, 185, 187, 190, 193, 194 and 195 in the premise of Rajmahal and in the ownership of plaintiff. The plaintiff has further mentioned khasra No. 227, 229 and 230 wherein the employees of plaintiff are residing as licensee. In para No.12, the plaintiff has challenged initiation of action by the defendants-appellants on the basis of revenue record and further in para No. 13 stated the fact that due to non-action by the defendants in correcting revenue entries, has filed a revenue suit No. 124/1997 in the Court of Sub Divisional Magistrate-I, Jaipur.

184. The plaintiff has further referred an action initiated by the defendants on 23rd May 2002 and service of a notice by plaintiff under Section 80 of CPC and Section 79 of JDA served to defendants and further refusal by the defendants to vacate the vacant land. The plaintiff in para No. 18 has mentioned that on 28th September 2002 the SDO Jaipur-I has returned the revenue suit but affirmed the title and possession of plaintiff. After return of revenue suit and receipt of copy, the plaintiff has filed current civil suit.

185. In identical set of facts, a dispute between same appellants and Jagat Singh (member of family of plaintiff) also arose,

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wherein a suit has been filed in Civil Court. A dispute was arising out of same covenant entered between Maharaja Man Singh and Government of India in 1949. The dispute was again related to adjoining land of Jai Mahal (Natanio Ka Bagh) and fact of same has been referred by both the parties. It also means that on accrual of cause of action, a Civil Court is right forum and suit has to be based upon cause of action. The plaintiff has filed a suit for declaratory relief for certain declaration with injunction both in mandatory and prohibitory in nature. A suit for declaration can be filed within three years as per Article 58 of Limitation Act. Section 34 of the Specific Relief Act provides for declaration of status or right, which is in the nature of equitable relief for already existing right which has been denied by the defendants.

186. In case of **Maran Mar Baselios Catholicos Vs. Thukalan Paulo Avira reported in AIR 1959 SC 31** and also in **Nagar Palika, Jind versus Jagat Singh, Advocate : (1995) 3 SCC 426**, Hon'ble Supreme Court has held that in a suit for declaration, if plaintiff has to succeed, he must do so on the strength of their own legs but certainly not on basis weakness of defendants.

187. A suit for declaration regarding entries in record of rights is maintainable since wrong entries will affect the rights of the plaintiff. Similarly, a declaratory suit regarding wrong survey and demarcation of land is also maintainable.

188. In a suit for declaratory relief, as discussed hereinabove the period of limitation commences from the date of denial (oral or written, express or implied) of the title of plaintiff and not from the date of commencement of name in revenue records. A cause

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of action arises only when the denial occurs by a formal act, or an oral denial made to third person or denial in writing.

189. The facts of the case demonstrate that till passing of award in 1993 in respect of 65 Bigha 16 Biswa land, the appellants/defendants have treated the entire land parcel of 120 Bigha 14 Biswa as private property of plaintiff. Being threatened and aggrieved thereafter the plaintiff has raised the issue of correction of entries to the then Chief Minister in his letter dated 19.09.1995 (Exhibited as Exhibit 21). Thereafter, Collector, Jaipur has submitted his report dated 03.06.1996 (Exhibit 28). Then plaintiff has filed a revenue suit for correction of entries in the Court of SDO-I, Jaipur (Revenue Court) in year 1997. After return of plaint under Order VII Rule 10 CPC, current suit has been filed for declaration and injunction.

190. Section 12 and 14 of the Limitation Act provides for exclusion of certain time consumed in legal proceedings whereas Section 22 of the Act provides for limitation in case of continuous breaches. Article 58 provides three years and in the instant case after the report of District Collector, real cause of action has begun when plaintiff was advised to file a revenue suit but when revenue suit was returned, thus the current civil suit is instituted within the limitation. The contentions to count limitation from 1958, year of revenue settlement or from 1949 year of entry in covenant are not convincing, as property was always treated and acknowledged by appellants as that of plaintiff.

191. The objection raised by learned AAG are not tenable, for the reasons as stated hereinabove. Similarly, application No.

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23147/2016, 3/2026 under Order 41 Rule 27 CPC and application No.4/2026 under Order 41 Rule 25 CPC deserves to be dismissed.

Issue wise discussions

192. The sequence of events as referred by learned AAG in his brief submissions has been reproduced as under in the form of list of dates:-

Date	Event
30.03.1949	The princely State of Jaipur, along with the other States, got integrated into the newly formed State of Rajasthan within the Dominion of India, with Jaipur becoming the capital of the new State. The dispute arises out of the actual identification of properties as to whether they were part of the covenant or not. The property concerned is situated in the heart of the Jaipur city. Post-accession of the properties of the former Ruler of the princely State of Jaipur a covenant describing private properties was signed. However, the properties claimed in the present proceedings were not part of the covenanted private properties as per the Covenant which was entered between the Government of India and the Ruler of erstwhile State of Jaipur. In the Article XII of the Covenant, it was agreed that the erstwhile Maharaja will be entitled to full ownership, use and enjoyment of all the private properties. As per the plaintiff's claim the disputed property was earlier known as Princes House which included in the covenant at S.No b: "b. Princes' House with attached buildings and quarters and the land around it, for the Heir- apparent".
26.11.1949	The Constitution of India was adopted and came into force w.e.f. 26.01.1950.
1951	The land bearing khasras no. 172, 180, 183, 184, 185, 186, 187, 190, 191, 193, 195, 227, 229 and 230 of village Hatroi tehsil and district Jaipur (Suit Property), not being a part of covenants entered between the erstwhile ruler of Jaipur and the Government of India was recognized as the property of the State Government and pursuant to the revenue settlement were recorded in the revenue records as siwichak in the name of the state, thereby becoming a Government land
11.02.1957	A registered deed of gift was executed by the erstwhile ruler of Jaipur state, Maharaja Sawai Man Singh in favour of Brigadier Bhawani Singh conveying his right on the property namely Rajmahal formerly known as

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	"Maji-ka-Bhagh or Residency" No mention of Princes House
24.06.1970	Late Maharaja Sawai Man Singh died
12.07.1970	A notification published in Gazette of India whereby Brigadier Bhawani Singh was accorded the status of Ruler of Jaipur
31.01.1972	Gift of land premises situated at Prince's House (Rajmahal Palace) (as described in the gift deed dated 31.01.1972) by Sawai Bhawani Singh to his daughter Diya Kumari falling in khasra no. 183-184 It is clarified that in the said gift deed executed on 31.01.1972 there is a reference of the earlier gift deed dated 11.02.1957 however the gift deed dated 11.02.1957 does not mention "Princes' House".
12.09.1974	Notification for land acquisition as per Section 52(1) of Urban Improvement Trust Act
28.09.1984	Brigadier Bhawani Singh addressed a letter to the Commissioner, Jaipur Development Authority wherein it was recorded that the land and premises of Rajmahal Palace were shown in revenue records as Government land as they were not included in the personal properties list appended to the covenant. In the said letter it was also intimated that Brigadier Bhawani Singh plans to convert property located at No. 07, Civil Lines, Jaipur (also known as Princes' House) into a Hotel. The copy of the said letter is annexed as Exhibit A-4
19..10.1993	Award passed by the Land Acquisition Officer pursuant to the notification dated 12.09.1974. As per the Award 65 biga 16 biswa land was acquired and compensation was payable to Shri Bhawani Singh, The Gandhi Housing Cooperative Society and M/s SMS Development Corporation on the basis of possession.
03.07.1992	Notification issued for acquisition of land under Land Acquisition Act, 1894
19.10.1993	Notification issued u/s 6 of Land Acquisition Act, 1894 for acquisition of khasra no. 178, 191, 194, 198, 181, 182, 183, 185, 196, 197 of Village Hatroi and khasrano. 93 and 94 of village Sudarshanpura. (pg. 4 of Order 41 Rule 27 application filed by the appellant in 2016)
10.01.1994	Claim raised before the Land Acqusition Officer, Jaipur by Brigadier Bhawani Singh seeking compensation for acquisition of land bearing khasra no. 178, 191, 194, 198, 181, 182, 183, 185, 196 and 197 village Hatroi (Rajmahal Jaipur)
24.01.1994	Land lying in khasra no. 172 measuring 5 biswa was acquired. Since the land was a Government land no compensation was computed or payable to anybody.
19.09.1995	Representation submitted to the then Hon'ble

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	Chief Minister seeking correction of revenue entries in light of the covenant.
20.10.1995	Award passed by the Land Acquisition Officer pursuant to notification dated 03.07.1992, after due consideration of various objections received and the claim filed by Brigadier Bhawani Singh vide his letter dated 10.01.1994. As per the Award compensation was not payable to anybody for the land belonged to the State Government.
03.06.1996	Letter written by District Collector, Jaipur in response to the grievances raised by Brigadier Bhawani Singh in his letter dated 19.09.1995. In the said letter the District Collector, Jaipur clearly specified that nowhere in the revenue records Rajmahal is mentioned. The khasras mentioned are registered in the name of Milkiyat Sarkar Residency or Mehakma Residency.
08.10.1997	Proceedings initiated by the respondent before the Sub-Divisional Magistrate (Revenue Court) seeking correction of the revenue entries in respect of the suit properties khasras. It is pertinent to mention here that since the execution of the covenant and subsequent settlement proceedings this was the first instance where a dispute was raised by the plaintiff regarding entries made in the revenue records.
28.09.2002	The SDM dismissed the revenue suit filed by the plaintiff for want of jurisdiction, observing that the dispute raised by the plaintiffs related to civil rights over abadi land and this could not be adjudicated in revenue proceedings
2002	Civil Suit No. 155/2005 filed and registered before the Additional District And Sessions (Fast Track No. 05, Jaipur Metro), seeking declaration of title on the grounds of revenue records being in contradiction with the covenant.
18.10.2023	Evidence Affidavit examination in chief filed by prosecution witness no. 1 Narendra Singh followed by subsequent cross-examination
24.01.2009	Second Evidence Affidavit filed by prosecution witness no. 1 Narendra Singh.
undisclosed by the plaintiff	RTI Application filed by one Shri Rajkumar Kedia, an acquaintance of one Narayan Singh stated to be a Power of Attorney Holder of Brigadier Bhawani Singh Ji.
13.10.2009	Response to RTI Application filed by Rajkumar Kedia by Deputy Secretary, Department of Estate, Government of Rajasthan. Along with the said response a Plan of Princes' House was provided to the RTI applicant. In the cross-examination of PW-1 Narendra Singh, he has admitted that in response to their earlier

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	application seeking certified copies of the original maps, the Estate Department by way of their letter dated 24.05.2003 stated that the original copies are not available with the department.
22.09.2011	Third Evidence Affidavit filed by prosecution witness no. 1 Narendra Singh.
24.11.2011	Impugned decree passed in the Civil Suit No. 155/2005.
In 2012	Civil First Appeal filed by State and Jaipur Development Authority.

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193. During course of arguments, the respondents/plaintiff have exhibited 84 documents and details of all these documents has been reproduced as under:-

1. Exhibit 1: Power of attorney in favour of Maharaj Narendra Singh

2. Exhibit 1/1: Copy of the power of attorney

3. Exhibit 2: Map annexed to the plaint

4. Exhibit 3: Covenant

5. Exhibit 4: Map annexed to Covenant

6. Exhibit 5: Gift deed dated 11.02.1957, registered on 27.06.1957

7. Exhibit 5/1: Certified copy of gift deed

8. Exhibit 6: Application for certified map copy and endorsement as to its unavailability9. Exhibit 7: Gazette notification dated 12.07.1970

10. Exhibit 8: Gift deed in favor of Rajkumari Diya Ji dated 31.01.1972

11. Exhibit 9: Map

12. Exhibit 9/1: Map accompanying gift deed

13. Exhibit 10: Order of ADJ-5 dated 13.06.2003 in T.I. 29/03, titled as "Bhawani Singh v. Prithvi Singh"

14. Exhibit 11: JDA plan/map for Shubham Enclave

15. Exhibit 12: Order dated 02.02.1987 passed by 'Saksham Adhikari Sankul'

16. Exhibit 13: List recording production of Covenant by bank

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when summoned by Court

17. Exhibit 14: Copy of original Covenant showing suit property as Princess House

18. Exhibit 14/1-14/20: Schedules annexed to Covenant

19. Exhibit 15: Map accompanying original Covenant

20. Exhibit 16 and 16-A: Orders of Land and Building Tax Department

21. Exhibit 17-21: Notices of Land and Building Tax Department

22. Exhibit 17/1-21/1: Further notices of Land and Building Tax Department

23. Exhibit 22: Tax payment challan of deceased plaintiff's daughter

24. Exhibit 22/1: Further tax challan of deceased plaintiff's daughter

25. Exhibit 23: Letter dated 03.06.1996 of District Collector, Jaipur

26. Exhibit 24: Revenue map

27. Exhibit 25: Representation dated 19.09.1995 submitted by deceased plaintiff to defendants

28. Exhibit 26-27: Notices dated 25.06.2002 under Section 80 CPC and Section 79 JDA Act issued by deceased plaintiff through counsel to Respondents

29. Exhibit 28-29: Postal receipts dated 15.06.2002

30. Exhibit 30-31: Acknowledgments of service dated 26.06.2002

31. Exhibit 32: High Court judgment dated 07.09.1988

32. Exhibit 33: Supreme Court order dismissing SLP dated 10.04.199533. Exhibit 34: Order regarding Bungalow No. 39 of Land and Building Tax Department

34. Exhibit 35-60: Revenue entries (jamabandis)

35. Exhibit 61: Order of Sub-Divisional Officer dated 28.09.2002

36. Exhibit 61/1: Detailed SDO order dated 28.09.2002

37. Exhibit 62: Letter of Tehsildar, Land Records, to SDO dated 03.08.2002

38. Exhibit 63-64: Jamabandi mutation registers of village Hathroi

39. Exhibit 65: Map accompanying entries

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40. Exhibit 66: Map copy issued on 28.04.2008 by Assistant Town Planner, JDA

41. Exhibit 67: JDA letter dated 13.10.2008 to deceased plaintiff

42. Exhibit 68: Award No. 3/73 passed by Land Acquisition Officer on 19.10.1993

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43. Exhibit 69: Photograph of original Princess House map

44. Exhibit 69/1: Copy of Princess House map

45. Exhibit 70: Deceased plaintiff's letter dated 22.05.2003 to Union of India seeking documents

46. Exhibit 71: Postal receipt

47. Exhibit 72: Reply of Ministry of Home Affairs, Government of India dated 31.05.2003

48. Exhibit 73: Reply of Estate Department to request for certified copies dated 14.05.2003

49. Exhibit 74: Power of attorney to Narayan Singh dated 31.07.1997

50. Exhibit 75: Lease deed of April 1955

51. Exhibit 76: Lease deed dated 17.03.1969

52. Exhibit 76/1: Map accompanying lease deed

53. Exhibit 77: Sale deed dated 17.01.1965

54. Exhibit 77/1: Map accompanying sale deed

55. Exhibit 78: Appellate order in JDA v. Bhawani Singh passed by Revenue Appellate Authority

56. Exhibit 79: Letter dated 27.08.2010 from Deputy Secretary Sunil Kumar Sharma, Estate Department, Rajasthan

57. Exhibit 80: Envelope containing the aforesaid letter

58. Exhibit 81: Certified copy of map accompanying original Covenant concerning suit property

59. Exhibit 82: Letter dated 13.10.2010 from Deputy Secretary Sunil Kumar Sharma, Estate Department, Rajasthan

60. Exhibit 83: Certified copy of map accompanying original Covenant concerning suit property

61. Exhibit 84: Envelope of aforesaid letter dated 13.10.2010

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194. Learned counsel for respondent has submitted that an application under Order 11 Rule 14 of CPC has been filed by plaintiff to requisition record relating to first acquisition proceedings but this record was not produced by the appellants-defendants primarily on the ground that the record is not traceable. The proceedings also indicate that when serious view was taken by the trial Court, the appellants-defendants have lodged an FIR against unknown person for missing of record. This record was summoned by the plaintiff to establish that at the time of first acquisition proceedings, initiated by the appellants in 1973, which ultimately culminated into award in favour of plaintiff in 1993, the appellants have not only treated and presumed the title of the plaintiff but also acknowledged 120 Bigha 14 Biswa recorded in 24 counts as personal property of plaintiff. The relevant record has not been produced before the trial Court and there is non-production except a defense that record went missing. Order 11 Rule 21 of CPC deals with a consequence of non-compliance with an order for discovery and non-production of document. Rule 21 of Order 11 CPC empowers the Court to strike out defense of the defendant in case of failure to comply with orders relating to production of document.

195. In the instant case, despite a direction by the trial Court on an application under Order 11 Rule 14 of CPC filed by the plaintiff, the documents were not submitted to the trial Court for proper adjudication of the case. Though the provision is very stringent but still it is a mode of exercise in case of default by any of the party. We agree with the proposition as laid down in case of **Union of India versus Ibrahim Uddin and another : (2012) 8 SCC**

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148 that the trial Court to strike out defense in case of non-compliance. Identical view has been expressed in case of **Babbar Sewing Machine Co Vs. Trilok Nath Mahajan : AIR 1978 SC 1436**, by Hon'ble Supreme Court.

196. Section 119 of Bhartiya Sakshya Adhiniyam (BSA) provides for presumptions (adverse inference), when a person withholds evidence i.e. within his possession or control and that evidence have helped the Court to decide the issue. A Court may presume that the evidence would have gone against the person. The issue of adverse inference in case of non-production of record relating to land acquisition proceedings initiated in 1972-73 is an important event, as the evidence, required to be produced by the appellants-defendants, has not been produced and still the appellants are before this Court agitating that the land in question (120 bigha 14 biswa) belongs to the appellants and it is not a private property of the plaintiff.

197. One more important aspect which have been raised during course of arguments is certain documents which were relied by plaintiff as maps and documents of communication about the covenant, have not been proved. During course of arguments, it has brought to the notice of the Court that the original covenant is with the Government but defendants have not produced any evidence with regard to covenant. The plaintiff has filed various documents which we have referred just hereinabove. The maps attached with covenant are the documents to show measurement and location alongwith extent of property considered as personal property of Maharaja Maan Singh, which later succeeded by plaintiff. The defendants have filed only four documents and not

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more than four documents but they have not led any evidence to counter the 84 documents as tendered by the plaintiff or respondents.

198. Chapter-V of Indian Evidence Act, 1872 provides for documentary evidence. During course of arguments provision relating to public document as provided from Sections 74 to 78 presumption about the documents from Section 79 to 90 were referred in support of plaintiff but nothing has been countered by the AAG except that the documents tendered by plaintiff are not sufficient to support the case of the plaintiff/respondents.

199. The basic rule which we have referred is that in a suit for declaration, the plaintiffs have to stand on its own legs and it cannot take advantage of weakness and shortcomings of other party or defendant has already been considered by us but at the same time we are well aware about the fact that the appellants are State and the stand of appellants have changed as per situation and circumstances, which is evident from the discussion made herein above. Non-production of important documents relating to first acquisition is sufficient to draw an adverse inference against the appellants. The trial Court has not taken a penal action under Order 11 Rule 21 CPC to strike out defence, as there is no such prayer on the behalf of plaintiff to strike out defence, but the appellants have all documents related to covenant and also of first acquisition.

200. Section 74 provides for public document whereas Section 76 provides for certified copies of public document and Section 77 provides for proof of document for production of certified copies. Similarly, Section 78 provides for proof of other official documents.

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Section 76 provides that every public officer having the custody of public document shall give that person on demand a copy of it on payment of the legal fees therefor together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof. Section 77 provides that such certified copies may be produced in proof of the contents of the public documents or part of the public documents of which they purport to be copies. Section 78(2) provides the procedure to prove documents and mere tender of a certified copy of public document is sufficient to prove a public document.

201. Section 79 provides presumption as to genuineness of certain copies and Section 83 provides presumption as to maps or plans made by authority of Government. The counsel for respondents have placed reliance upon the provision under the Indian Evidence Act to support his case.

202. Learned counsel for respondents have placed reliance upon judgment in case of **Jaswant Singh (Supra). Arjun Chandra Mehta (Supra) and Manita Tak (Supra)** for the purpose.

> "(i) in case of **Jaswant Singh v. Gurdev Singh & Ors., 2011 (7) Supreme 345**:-
> ".....it is a public document in terms of section 74 of the Indian Evidence Act, 1872 and the certified copy of the public documents prepared under section 76 of the act is admissible in evidence under section 77 of the said Act. A certfified copy of a public document is admissible in evidence without being proved by calling witnesses."
> (ii) In case of **Arjun Chandra Mehta v. Kailash Chandra, 2023(3) DNJ (Raj.) 1292:-**
> "Evidence Act, 1872-Secs. 65(e) & 74 Application filed to treat the certified copy of the sale deed and patta as admissible in evidence -Application allowed-Writ petition by the defendant again in the order Plaintiff

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pleaded that the documents in question are the public document-Private documents which are kept by the State as a public record are admissible in evidence-Held, no case made out for interference."

(iii) In case of **Manita Tak & Ors. v. Ram Gopal Tanwar & Ors., 2018(2) DNJ (Raj.) 823:-**

"Private documents which are kept as public record by the State shall form the public documents-Held, Order set aside and the Trial Court is directed to take the certified copy."

203. The arguments advanced by learned AAG are contrary to established legal position. An information has been received by a third party who has not been examined as witness, but same has been tendered in evidence by PW1 and exhibited as Exhibit 82 and 83, and learned AAG has referred a nexus and a conspiracy hatched by plaintiff but there is no support of allegations levelled by the AAG. Neither is there any pleading nor is any document to support the allegations which means learned AAG has advanced scandalous allegations during course of arguments which normally not required to be advanced by the appellants.

204. A map (Ex.83) said to be a map along with covenant and same has been received under the RTI Act. A document received under the RTI Act is a certified copy and it satisfies the provisions of Section 76 of the Indian Evidence Act and same is a valid tender in evidence without requiring a formal proof by calling any of the witness relating to upkeeping of record or covenant. When a law provides obtaining of certified copies of public documents under the Right to Information Act and pursuant to any application submitted by anyone, when a certified copy to the public document or part of the document has been issued, then it carries signature and seal of the Information Officer of a public office.

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Once a certified copy has been issued, even under RTI Act, then the presumption clause is applicable upon such document.

205. In case of **Madamanchi Ramappa & Anr. v. Muthalur Bojjappa : AIR 1963 SC 1633**, a three-Judge Bench of Hon'ble Supreme Court has considered provision of Section 77 of Indian Evidence Act regarding proof of documents by production of certified copies. The findings has been recorded on the strength of an established principle that once a document is preserved as a public document, it need not to be proved like any other private document.

206. A public document is distinguishable from a private document and same has been classified in Indian Evidence Act now under Bharatiya Sakshya Adhiniyam. The objections about exhibition of public documents, whether certified copies obtained directly or under the RTI Act through any other person or a third person are not tenable at all. The AAG is not free to argue against the law and the arguments advanced by learned AAG are contrary to the provision of law, therefore, there is no perversity or illegality in relying upon the documents which were considered as public document.

207. One objection has been raised regarding not placing reliance upon Ex.A4 tendered in evidence by the defendants-appellants. It has been submitted by the appellants that plaintiff Brigadier Bhawani Singh addressed a letter to the Commissioner, JDA wherein he admitted that land and premises of Rajmahal were shown in revenue record as Government land as they were not included in the personal list as appended to the covenant. In said letter it was also intimated that plaintiff Brigadier Bhawani Singh

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plans to convert property located at Bungalow No.7, Civil Lines, also known as Princess House into a Hotel.

208. The main witness of appellants-defendants has been Examine as DW1 and in the entire evidence of DW1 nowhere it has been mentioned that the plaintiff has addressed a letter to defendant No. 2 acknowledging and admitting that Rajmahal is not Princess House. In the entire written statement of the defendant No. 2 nowhere it has been mentioned that any letter dated 28th September 1984 was addressed to the Commissioner, JDA.

209. The letter 28 September 1984 was exhibited in additional affidavit of DW-2 Navratan Kohli submitted on 27-03-2010 to the trial Court. The affidavit placed on record indicate that in para No.2 of affidavit, the exhibit has not been marked though same has been marked before the trial Court on 27th March 2010. In the cross-examination neither the source nor discovery of letter Ex. A4 has been established by DW-2. In cross-examination DW-2 has admitted that exhibit A4 has been received from office of JDC. The admission also indicate that this letter has been filed by Deputy Commissioner. The witness DW-2 has refused to identify and acknowledge signature of plaintiff as he is not aware about the signature of plaintiff. The admission also indicate that neither is there any dispatch number nor any receipt or any marking over Ex.A4. The cross-examination clearly indicate that this witness is not aware about Ex. A4.

210. The DW-1 has not tendered Ex. A4 in his evidence where DW-2 has tendered in additional evidence but in the cross-examination he has not supported and proved the document Ex. A4, as filed by plaintiff. Admittedly, neither is there any dispatch

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number from plaintiff nor any receipt number or marking of the office of defendant No. 2. There is no disclosure about the source of letter. The office of Jaipur Development Commissioner has provided the letter to the Deputy Commissioner and Deputy Commissioner has not filed said letter Ex. A4. The Deputy Commissioner has not appeared as witness to support Ex.A4. The evidence of DW-2 suggest that he is not aware what kind of document Ex. A4 is.

211. In absence of any classification of document as public document as prescribed under Section 74 of Indian Evidence Act, the rest of the documents are private documents under Section 75 of the Indian Evidence Act. Exhibit A4 is to be treated a private document. The burden lies upon the defendant to prove the document but no positive or assertive evidence has been filed by the defendant No. 2 to prove content and execution of document by plaintiff.

212. Learned AAG has specifically referred Sections 45 and 73 of Indian Evidence Act to draw our attention that the trial Court has committed serious error in not comparing the signature of plaintiff, which were available on power and also on the plaint or other documents. Section 45 provides for opinion of experts and to invoke the provision an application is required to be filed by defendant No. 2 but no application has been filed by defendant No. 2 to call an expert to give evidence about the signature on Ex. A4 and compare it with other admitted signature of plaintiff. If defendant No. 2 has not complied the provision then how can they dare to argue before this Court in first appeal.

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213. Section 73 provides for comparison of signature with other admitted and proved signatures. In order to invoke Section 73, it is also necessary that that defendant No. 2 must draw an attention of the trial Court. Section 73 empowers the Court to take suo motu cognizance when attention is invited. The Court can only maneuver when a prayer is made and it has been established that the document has been executed by the plaintiff and submitted to a party in the proceedings. In absence of inviting any attention of the Court, normally the Court does not resort to indulge as an active player in civil matter.

214. A civil matter is a dispute between two parties and the Court is an independent adjudicator having no bias or prejudice with any of the party. The applicability of any provision depends upon the facts of the case. Not a single argument has been advanced by the counsel of the defendants before the trial Court to invoke provision of Section 73 of Indian Evidence Act. Similarly, there is no pleading of the appellants in the entire memo of appeal about non-consideration of Sections 45 and 73 of Indian Evidence Act by the trial Court.

215. We are deciding a civil appeal and same has to be decided in accordance with established procedure and not in accordance with the principle applicable to decide a writ petition under Article 226 of the Constitution of India. A civil case is governed by the provision of CPC and in absence of invocation or prayer about any provision a Court normally does not consider to invoke any provision unless the facts so warrants but in the instant case, the execution of document Ex.A4 on 28 September 1984 has not been proved from the evidence of DW-2. The evidence of DW-2 suggest

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that the document has been filed only for purpose to file and tendered in evidence only to mark an exhibit and a marking of exhibit of private documents does not mean that the document has been proved. The cross-examination of DW-2 has shattered the receipt of Ex.A4 in the office of appellant No.2, therefore, the reliance placed by learned AAG on Ex.A4 is purely misconceived and it has nothing to do with the instant case. The trial Court has rightly drawn presumption about public documents, certified copies of map and map under the RTI Act. The trial Court has not invoking provisions under Section 45 and 73 of the Indian Evidence Act.

Issue No.1

216. This issue has been decided in favour of the plaintiff. Three witnesses PW-1 Narender Singh, who is power of attorney holder, PW-2 Pratap Singh Nathawat and PW-3 Narain Singh were examined in support of plaintiff whereas DW-1 Mahendra Kumar and DW-2 Navratan Kohli were examined by the defendant No. 2. We have scanned the examination-in-chief and also cross-examination along with documents as referred hereinabove.

217. The plaintiff has stated that Ex. 3 and 4 are with covenant and map annexed with covenant whereas Ex. 5 is gift deed dated 11-02-1997. Ex.6 is an application for certified map copy and endorsement as to its unavailability. Ex. 11 is JDA plan/map for Shubham Enclave. Exhibit 13 is list recording production of covenant by bank when summoned by the Court. Whereas Exhibit 14 is copy of original covenant indicating suit property as princess house. Exhibit 14/1 to 14/20 are scheduled annexed with

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covenant whereas Exhibit 15 is map accompanying original covenant.

218. Exhibit 69 is a photograph of original Princess House map whereas Exhibit 69/1 is a copy of Princess House map. Exhibit 72 is reply of 72 is reply of Ministry of Home Affairs, Government of India dated 31 May 2003 and Exhibit 73 is reply of Estate Department to request for certified copies dated 14-5-2003. Exhibit 79 is letter dated 27 August 2010 from Deputy Secretary, Estate Department Rajasthan, Ex. 81 is certified copy of map accompanying original covenant concerning suit property. Exhibit 82 is letter dated 13-10-2010 from Deputy Secretary, Estate Department Rajasthan and exhibit 83 is certified copy of map accompanying original covenant concerning suit property.

219. There are certain vague answers given by PW-1 in his cross-examination and same were referred by learned AAG. The PW-1 is not aware about certain facts or circumstances which were referred during cross-examination to PW1 but these answers are not sufficient to discredit the documentary evidence submitted by the plaintiff whereas the cross-examination of DW1 and DW2 clearly indicate that they have impliedly supported the case of plaintiff. In the entire cross-examination, both the witnesses DW1 and DW2 have not asserted the case of appellants-defendants.

220. A civil suit is decided on basis of preponderance of probability, which refers to greater likelihood of one fact over the another. The standard of proof in civil proceedings is far more different than in criminal proceeding. The principle to establish the fact beyond a reasonable doubt is not applicable in civil law. The law over the point is settled that once a documentary evidence

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has been tendered and document has been proved, then it outclass the oral evidence. If any presumption clause is attached with any document then the document is not required to be proved by calling a witness and mere tender is sufficient.

221. The evidence on record on issue No.1 suggest that the plaintiff has not only tendered the documents to establish the land in question as Princess House but also able to establish that the property which has been known as Rajmahal was in fact Princess House and was demarcated and kept as personal property in the covenant entered between formal Ruler of Jaipur and the Government of India. There is no document filed defedants to rebut the documentary evidence of the plaintiff. The revenue record which has largely been relied by the defendants No.2 is just entries contrary to the provision of covenant. An identical issue has already been decided wherein the land attached with Jaimahal (Natanio Ka Bagh) was treated as part of the covenant. The revenue entries in favour of the appellants are not sufficient to draw any conclusion that plaintiff is not the true owner of the property in question. The case of the appellants is based upon the revenue entries which were entered in the record by way of settlement of 1958. The contention of learned AAG is largely based upon the settlement as there is no challenge to the settlement by the respondents-plaintiff.

222. We have already discussed that it is not necessary for the plaintiff to challenge the settlement process as the revenue record or the revenue entries are in domain of appellant No.1 but it is already settled law that revenue entries are only for the fiscal purpose and they do not confer any right upon anyone and no

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presumption can be drawn on the basis of revenue entries. Conversely, the plaintiff cannot be ousted on the basis of said revenue entries, particularly when the property has been left as personal property under the covenant entered between Ex.Ruler of Jaipur and Government of India before enforcement of Constitution of India. Thus, covenant has more effective source than the Rajasthan Tenancy Act or the Land Revenue Act to adjudicate personal issue. The suit has been filed only for correction of entries in consonance with Covenant. The material on record clearly indicate that at the time of first land acquisition, the properties were treated as personal property of plaintiff and same is also evident from other documents from exhibited by witnesses of plaintiff and also from documents itself that the property in question was always been treated by appellants as personal property of plaintiff.

Revenue entries

223. In case of **Corporation of the City of Bangalore Vs. M. Papaiah and Anr. reported in 1989 3 SCC 612**, It was held that revenue records are not document of title and the question of interpretation of document not being a document of title is not a question of law.

224. In case of **Guru Amarjit Singh versus Rattan Chand and others reported in (1993) 4 SCC 349** : Hon'ble Supreme Court has held that the entries in jamabandi are not proof of title.

225. In case of State of **Himachal Pradesh versus Keshar Ram & Others reported in (1996) 11 SCC 257**, Hon'ble Supreme Court has held that the entries in the revenue papers, by no

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stretch of imagination can form the basis for declaration of title on suit land in question.

226. In view of the material placed on record and the evidence on record, the trial Court has rightly decided issue No.1 in favor of the plaintiff and there is no perversity or illegality while deciding the issue in favor of plaintiff. Therefore, the finding on issue No.1 is affirmed.

Issue No.2

227. The plaintiff initially instituted a suit No. 124/997 for correction of entries in SDO-I, Jaipur and during pendency, on 23rd May 2002, the defendant No.2 has constructed boundary wall and an evidence to this effect was given by PW1 Narendra Singh, PW2 Pratap Singh,and PW3 Narayan Singh. The evidence of DW1 is only with regard to exercise of their right as the Property belongs to Government in revenue record. There is no defense on authorization of appellant No. 2 or defendant No. 2 to acquire the remaining property. The defense of appellant No. 2 is purely based upon the revenue entries and nothing more than revenue entries. The evidence on this issue almost is one-sided and only supports the case of plaintiff.

228. The material on record, as discussed by us, clearly indicates that 120 bigha 14 biswa land (total count 24) can be divided into three different portions, first is 65 bigha 16 biswa acquired by the appellants pursuant to acquisition commenced in 1972-73, and possession was taken in 1993 whereas second portion allegedly acquired and a zero award dated 20th October 1995 has been passed by LAO and third no proceedings whatsoever has been initiated in respect of the properties and it include Khasra No. 186,

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227, 230. The material clearly indicate that on these khasra such as Khasra Nos. 186, 227, 230 and others, appellant No. 2/defendant number 2 has no right whatsoever, even after considering even assuming the award dated 20th October 1995, as these khasra are not part of award dated 20.10.1995.

229. The case of appellants clearly indicate that they have exceeded the authority provided under the JDA Act in order to oust the plaintiff from peaceful enjoyment of the part of the suit property, therefore, on the basis of evidence, both documentary and oral, issue No. 2 has rightly been decided by the trial Court and there is nothing on record, on the basis of which may conclude that there was any misreading of documentary or oral evidence by the trial Court, thus, the finding on record on issue No. 2 is affirmed.

Issue No.4

230. This issue has already been discussed in detail with regard to jurisdiction of revenue Court versus civil Court. After the letter of Collector, dated 03.06.1996 pursuant to representation dated 19th September 1995, the plaintiffs have instituted a revenue suit and by order dated 28th September 2002, the SDO-I, Jaipur has returned the suit under Order VII Rule 10 of CPC on the ground that the land in question is abadi land and civil Court has jurisdiction.

231. After the findings recorded by a revenue Court, a person who feeling aggrieved from the action of the appellants has no option except to pursue a civil suit. The necessary notice under Section 80 of CPC and Section 79 of JDA Act were already served thus, before institution of civil suit it is a general principle of law that no

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person can be deprived of his property except in accordance with law. Article 300A of the Constitution provides right to property and same has to be construed in light of the provision under the Constitution.

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232. It is also a general principle that no person is left remediless, when he is aggrieved from any of the action of the State or the appellants. The plaintiff has knocked the door of revenue Court but after return of plaintiff it is not necessary for the plaintiff to go and challenge the order rather in accordance with the decision by a revenue authority, a civil suit has been filed thus the trial Court has not committed any error in deciding the issue No.4 against the appellants-defendants.

233. Learned AAG has referred judgment in case of ***Pyarelal vs. Shubhendu Pilania (Minor) through legal guardian*** (supra), which was in fact filed by a person who was not having any record to support his case, and filed a suit to claim khatedari rights. Herein the plaintiff has not filed any suit for conferment of any tenancy right either under the Rajasthan Tenancy Act or any other law rather his suit is to correct the revenue entries in accordance with the covenant. The rights of the plaintiff has been derived from covenant, therefore this judgment is not applicable upon the circumstance as referred herein above.

234. In view of aforesaid, the findings on issue No. 4 is affirmed.

Issue No. 5

235. This issue has been decided against the defendant and not much arguments have been advanced by learned AAG over this issue, though learned counsel for the plaintiff has placed reliance upon judgment in cases of **Suhrid Singh Vs. Randhir Singh &**

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Ors. (supra), Kedar Agarwal and Anr. Vs. Rajkumr Agarwal and Ors : S.B. Civil Writ Petition No. 7484/2017, Rajasthan Avasan Mandal Vs. Miss Sunita Sharma : S.B. Civil Revision Petition No. 1034/93 along with the provision of Rajasthan Court Fee and Suit Valuation Act, 1961.

236. Having considered the submissions and perusal of the material, we are of the considered view that there is no perversity or illegality in deciding the issue relating to Court fee, as the trial Court has considered the issue. Therefore the finding on issue No. 5 is affirmed.

Issue No.6

237. The issue relating to limitation has already been considered and same is decided against the appellants. The counsel for the respondents have placed reliance upon judgment in case of **Vidya Devi Vs. State of Himachal Pradesh & Ors. (supra),** and **Shakti Bhog Food Industries Ltd. Vs. Central Bank of India & Anr.** (supra).

238. Having considered the analysis already made while considering specific objection of learned AAG, the findings recorded by the trial Court deserves to be affirmed as there is no perversity or illegality after considering Article 58 with regard to declaratory suit filed by the plaintiff, thus the finding on issue No.6 is hereby affirmed.

Issue No.7

239. Learned AAG has not established anything to show that the plaintiff was a licensee on the entire land either of 120 bigha 14 biswa or land after after acquisition i.e. 54 bigha 18 biswa or in particular on khasra No. 186. The onus is upon the defendants-

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appellants to establish that the plaintiff was a licensee upon said property and license has been revoked by them. Not a single whisper of evidence or document or oral has been placed on record to show that the plaintiff after Independence was as a licensee. The general law is that one who asserts has to establish that fact is applicable upon this issue and the appellants have failed to discharge their burden.

240. The counsel for respondents has placed reliance upon judgment in case of **Abdul Latif & Ors. Vs. Nagar Vikas Pranyas, Udaipur (supra), Chief Conservator of Forest, Govt. of A.P. Vs. The Collector and Others (supra), Municipal Board Jhunjhunu through the Executive Officer Vs. Prahlad Ram (since deceased) Represented by Following LRs. (supra)**.

241. Having considered the entire material, the issue has not been proved by the appellants in particular defendant No. 2 and the trial Court has rightly decided the issue against the defendant No. 2, therefore, the findings recorded on issue No. 7 deserves to be affirmed.

Conclusion

242. The instant appeal has been filed by defendant No. 1 and defendant No. 2 jointly, though defendant No. 1 or appellant No. 1 has not participated in the process before the trial Court as the appellant No. 1 has neither filed written statement nor any evidence. The defendant No. 2 or appellant No. 2 is an authority under the JDA Act and cannot exercise authority beyond the scope of JDA Act, which we have already discussed herein above. In order to exercise any power except provided under the JDA Act,

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appellant No.1 has to authorize appellant No.2. In absence of any authority, exercise of authority by appellant No.2 is high-handedness and against the law. It is a well-settled proposition of law that if law requires anything to be done in a particular manner, then same has to be done in that particular manner. Anything done contrary to the procedure prescribed under the law is void and abuse of process of law, which may result in denial of right of an individual or an institution or any other entity.

243. The objections raised by learned AAG on behalf of the appellants have already considered and nothing found substantive on the basis of which the judgment and decree passed by the trial Court, be termed as defective or against law or perverse. The findings recorded on issue Nos.1 and 2 are in consonance with material on record and also supportive of evidence by the plaintiff, both documentary and oral. The trial Court has rightly applied the rule of evidence about presumption and exclusion of oral evidence when documentary evidence is available, therefore, the findings on issue Nos.1 and 2 deserves to be affirmed.

244. Issue No.3 has not been pressed by the learned counsel for the respondents and we have not discussed about the finding on issue No.3.

245. Issues Nos.4 to 7 were required to be proved by the defendants/appellants but the findings recorded by the trial Court clearly indicate that whatever the legal position has been placed before the trial Court were considered in right perspective, therefore, there is no perversity or illegality in recording finding on issue Nos.4 to 7.

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246. The entire material on record indicate that the trial Court has considered the evidence both oral and documentary and with a reasoned finding on all the issues, has decided the issues, and there is no perversity or illegality in the findings recorded by the trial Court. The arguments advanced by learned AAG are not sufficient to disturb the findings of the trial Court or draw any conclusion in favour of the appellants.

247. The applications under Order 41 Rule 27 CPC and under Order 41 Rule 25 CPC were filed at belated stage, just to do some patchwork to repair the case of the appellants which has been presented before the trial Court. These applications were filed at very belated stage and there is no justification in filing of these applications, therefore all these applications deserve to be dismissed.

248. The appellants have not followed the rule of pleadings, and learned AAG has argued beyond the pleadings,but we have considered his entire arguments otherwise the arguments advanced by learned AAG deserve to be dismissed on very threshold only on the ground that maximum part of his arguments and written submission is just upon the grounds which were neither part of written statement of defendant No.2 nor part of memo of appeal jointly filed by the appellants-defendants.

249. It is settled law that right to appeal has to be exercised within the limit and only and accordingly to the procedure provided by law. We placed our reliance upon judgment in case of **State of Haryana v. M/s. Maruti Udyog Ltd. : AIR 2000 SC 2941**.

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250. Normally, the Appellate Court may not interfere with the findings of the trial Court unless the findings recorded by the trial Court is erroneous or the findings have been Arrived in ignorance of the material evidence on record or against the law and to support this contention, we place reliance upon the judgment in case of **Venkatesh Construction Company v. Karnataka Vidyuth Karkhane Limited : (2016) 4 SCC 119**.

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251. In view of discussion made hereinabove, the present first appeal and the applications preferred by the appellants deserve to be dismissed.

Order

252. The instant civil first appeal under Section 96 of CPC filed aggrieved from judgment and decree dated 24th November 2011 passed by learned Additional District Judge (Fast Track) No. 5, Jaipur Metropolitan is hereby dismissed along with application Nos.23147/2016, 3/2026 (both filed under Order 41 Rule 27 CPC), and application No. 4/2026 under Order 41 Rule 25 of CPC. The judgment and decree dated 24th November 2011 in Civil Suit No. 155/2005 (140/2002) (895/2002) is hereby affirmed.

253. Miscellaneous application, if any, stands disposed of.

254. No order as to costs.

(ASHOK KUMAR JAIN),J

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