



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



S.B. Civil Second Appeal No. 499/2012

CNR: RJHC020159272012 | URN: CSA / 813U / 2012

Anil Sharma S/o Late Sh. Om Narayan Sharma, R/o 906/28,
Pahadganj, Ajmer.

-----Appellant/Plaintiff

Versus

King Edward Memorial Rest House Society (King Edward 7th
Memorial Rest House Society) through its Chairman, SDO,
Ajmer.

-----Respondent/Defendant

For Appellant(s) : Mr. Neeraj K. Tiwari
For Respondent(s) : Mr. Ravi Bhojak

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

13/10/2026

1. The instant second appeal has been preferred by the appellant-plaintiff after dismissal of Civil Regular Appeal No. 202/2011 on 15th September 2012 by the learned Additional District Judge No. 3, Ajmer, affirming the judgment and decree dated 12th April 2007 passed in Civil Suit No. 133/2001 by the learned Civil Judge (Junior Division) (South), Ajmer.
2. The appellant-plaintiff has preferred a civil suit for permanent injunction against the proposed eviction on the ground that the plaintiff, who was allowed to place and fix a cabin in the premises of the respondent on a monthly rent basis, has been threatened by the respondent to dispossess/evict. The defendant has filed a written statement, and the plaintiff has filed a rejoinder. On the basis of the pleadings of the parties, three issues



were framed. The plaintiff examined himself as PW-1 and exhibited 13 documents, whereas Jainiwas Lakhotia has been examined as DW-1 and five documents were exhibited by him. Issue No. 1 was decided against the appellant-plaintiff, whereas Issue No. 2 was decided partially in favour of the defendant. Ultimately, the civil suit preferred by the plaintiff was dismissed. The plaintiff preferred a first appeal under Section 96 CPC before the District Judge, which was transferred to the Additional District Judge No. 3, Ajmer, and the same was dismissed on 15th September 2012. Now, the second appeal has been preferred to challenge the judgments of the Court below.

3. Learned counsel for the appellant has submitted that the appellant is in legal possession of the property and cannot be evicted except in accordance with due process of law. He also submitted that, while deciding the issue, the Trial Court has drawn a conclusion that the plaintiff is an encroacher, and the Court has termed the appellant an encroacher, which is perverse and illegal finding. He also submitted that the appellant is entitled for protection under the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964, and that, without any notice, the licence cannot be terminated. He has also submitted that the appellant was never served any notice for termination of the licence. He has further submitted that both the Courts below have committed a serious error in not considering the legal position, therefore, the second appeal is liable to be admitted on the proposed substantial questions of law, as proposed in paragraph No. 16 of the memorandum of appeal.



4. Learned counsel for the respondent-defendant has submitted that the plaintiff filed a suit for permanent injunction, which was dismissed by the Trial Court, and the First Appellate Court has also dismissed the appeal. He has submitted that there is a concurrent finding of fact, and this Hon'ble Court cannot intervene in the concurrent findings of fact. He has also submitted that there was no cause of action in favour of the appellant. He has further submitted that both the Courts below have rightly considered the material and that there is no perversity in the orders passed by the Trial Court and the First Appellate Court.

5. Heard learned counsel for the parties and perused the material placed on record.

6. Learned counsel for the appellant has placed reliance upon Exhibit 4, which has been accepted between the parties. The terms and conditions of Exhibit 4 have been mentioned by the First Appellate Court in para No. 11 of the judgment dated 15th September 2012, and we are reproducing the same as under:-

11. इस बाबत पत्रावली पर आई साक्ष्य का ध्यानपूर्वक अवलोकन किया। वादी ने अपनी मौखिक साक्ष्य में यह परिसर पट्टे पर होना बताया है, जब कि डी.डब्लू. 1 जयनिवास लखोटिया ने इसे अनुज्ञप्ति पर होना बताया। दोनों पक्षों के बीच में प्रदर्श-4 दस्तावेज इस बाबत निष्पादित होना विवाद रहित है। अतः ऐसी स्थिति में प्रदर्श-4 इस प्रकरण में सबसे महत्वपूर्ण दस्तावेज है। प्रदर्श-4 दस्तावेज की जो शर्तें हैं, उनके अवलोकन से निम्न तथ्य प्रकट हुए हैं:-



1— प्रतिवादी का यह परिसर मूलतः एक गेस्ट हाउस होकर विशाल व बड़ा परिसर है, जिसमें निर्मित, खुला स्थान उपलब्ध है।

2— इस परिसर में वादी को एसटीडी पीसीओ चलाने हेतु खुला भू-भाग में से 10x8 फुट का रिक्त भू-भाग 11 माह की अवधि के लिये उपयोग हेतु अनुमत किया गया।

3— यह भू-भाग इस दस्तावेज में ही चिंहीत किया गया है तथा साथ में यह भी तय किया गया कि 11 माह की अवधि में चिंहीत स्थान को प्रतिवादी अपनी इच्छानुसार परिवर्तन कर सकता है।

4— 11 माह की यह अवधि दिनांक 15-8-2000 से 15-7-2001 तक के लिये थी।

5— उपलब्ध करवाये गये भू-भाग पर वादी को कोई पक्का निर्माण करने का अधिकार नहीं दिया गया बल्कि अस्थाई केबिन व फिटिंग की अनुमति दी गई थी, जिसका खर्चा वादी द्वारा वहन किया जाना था और अनुमति की अवधि समाप्त होने के बावजूद अस्थाई निर्माण वादी को हटाना था।

6— 11 माह की अवधि के पश्चात् अवधि के विस्तार का अधिकार प्रतिवादी के पास सुरक्षित रखा गया तथा विस्तार होने पर किराया राशि 2000/-रु. से अधिक भी बढ़ाई जा सकने का उल्लेख है।

7— वादी को एसटीडी पीसीओ के अलावा अन्य कोई व्यवसाय करने की अनुमति नहीं दी गई तथा यह भी प्रतिबन्धित किया गया कि वादी इस परिसर को किसी अन्य व्यक्ति को उप-किराये पर नहीं देगा तथा कब्जा नहीं सौंपेगा।

8— 11 माह की अवधि समाप्त होने के बाद प्रतिवादी इस परिसर का कब्जा लेने हेतु स्वतंत्र होगा और उसके लिये अलग से कोई विधिक कार्यवाही की आवश्यकता नहीं होगी।





7. The material clearly indicate that the licence was only for 11 months, from 15th August 2000 to 15th July 2001. The appellant-plaintiff is bound to abide by the terms and conditions of the licence. The appellant has filed a suit on the ground that, on 27th September 2001, the employees of the defendant-respondent came to remove his cabin, and on the basis of this cause of action, the suit has been filed. The licence of the petitioner was very specific for a period of 11 months, which expired on 15th July 2001, i.e. way before accrual of cause of action. The appellant-plaintiff has filed a suit for permanent injunction and has examined himself before the Trial Court. The Trial Court has considered the entire evidence of both the parties and found that there was no prima facie case to conclude that the plaintiff is entitled for injunction. While considering the grounds of the defendant on Issue No. 2, the Trial Court has observed that the licence was not terminated, as the defendant has not terminated the licence, though the licence has ended on 15th July 2001, by efflux of time.

8. The First Appellate Court has also considered the grounds raised by the appellant-plaintiff, particularly the extension of the period of the licence. The Court cannot protect a person whose licence has expired, and has not been extended by the respondent. The First Appellate Court has considered the legality as well as the facts, as narrated in the evidence.

9. The Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964, provides a summary procedure for



removing unauthorized occupants from government and public properties. The procedure prescribed therein clearly indicates that a written notice is required to be served upon any occupant suspected of unauthorized occupation, asking him to show cause why an order of eviction should not be made. If the occupant fails to justify the reason or evict the property, the Estate Officer is empowered to issue an order of eviction. Section 10A bars the jurisdiction of the Civil Court from entertaining suits or proceedings in respect of the eviction of any person from public premises or the recovery of arrears or damages.

10. In the instant case, if the counsel for the petitioner is raising an argument about the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964, then he cannot file a second appeal, and invocation of the jurisdiction of the Civil Court by filing a civil suit is just an abuse of the process of law, therefore, the argument of the counsel for the appellant is not tenable.

11. It is a simple case of licence which has already been expired, and after expiry, the appellant-plaintiff has no right to continue on the premises in the garb of an injunction order by any Civil Court, therefore, the appeal does not give rise to any substantial question of law. The Trial Court and the First Appellate Court have considered the facts and grounds in detail, and there is no perversity or illegality in the orders passed by the Courts below.

11. Section 100 of CPC provides for second appeal in case wherein the High Court is satisfied that the case involves a substantial question of law. Thus, the First Appellate Court is final



court on facts and in second appeal normally cannot re-appreciate the evidence or facts.

12. Just to determine whether a question is substantial question of law or not, was laid down by a Constitution Bench of Hon'ble Supreme Court in case of **Chunilal V. Mehta & Sons. Ltd. Vs. Century Spg. and Mgf. Co. Ltd. AIR 1962 SC 1314**, as under:



"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

13. Recently Hon'ble Supreme Court in case of **Suresh Lataruji Ramteke versus Sau. Sumabai Pandurang Petkar & Ors. (Civil Appeal No. 6070/2023, arising out of SLP(C)No.20183 of 2022** decided on **21.09.2023**) considered the scope of Section 100 of CPC and summarised the law as under:

13. The jurisprudence on Section 100, CPC is rich and varied. Time and again this Court in numerous judgments has laid down, distilled and further clarified the requirements that must necessarily be met in order for a Second Appeal as laid down therein, to be maintainable, and thereafter be adjudicated upon. Considering the fact that numerous cases are filed before this Court which hinge on the application of this provision, we find it necessary to reiterate the principles.

13.1 The requirement, most fundamental under this section is the presence and framing of a "substantial question of law". In other words, the existence of such a question is sine qua non for exercise of this jurisdiction.

13.2 The jurisdiction under this section has been described by this Court in **Gurdev Kaur v. Kaki**



(2007) 1 SCC 546 (Two-Judge Bench) stating that post 1976 amendment, the scope of Section 100 CPC stands drastically curtailed and narrowed down to be restrictive in nature. The High Court's jurisdiction of interfering under Section 100 CPC is only in a case where substantial questions of law are involved, also clearly formulated/set out in the memorandum of appeal. It has been observed that: "At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:

- (i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;
- (ii) The substantial question of law to precisely state such question;
- (iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;
- (iv) Another part of the section is that the appeal shall be heard only on that question."

Gurdev Kaur (supra) was referred to and relied upon in **Randhir Kaur v. Prithvi Pal Singh & Ors. (2019) 17 SCC 71**

13.3 In **Santosh Hazari v. Purushottam Tiwari (2001) 3 SCC 179** a Bench of three Judges, held as under in regard to what constitutes a substantial question of law:-

- a) Not previously settled by law of land or a binding precedent.
- b) Material bearing on the decision of case; and (c) New point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. Therefore, it will depend on facts of each case.

Such principles stand followed in **Government of Kerala v. Joseph 2023 SCC Online SC 961** and **Chandrabhan v. Saraswati 2022 SCC Online SC 1273**.

16.5 Interference on findings of fact permitted in exceptional cases, i.e., when finding is based on either inadmissible or, no evidence. This Court in **Dinesh Kumar v. Yusuf Ali (2010) 12 SCC 740** referring to various other cases held:- a) It is not permissible for High Court to reappreciate evidence as if it was the first appellate court unless findings were perverse.





- b) Finding of fact can be interfered in exceptional circumstances as rarity, rather than a regularity.
- c) Scrutiny of evidence in second appeal is not prohibited but has to be exercised upon proper circumspection.

14. In case of **Amar Singh Vs. Dalip Singh (2012) 13 SCC**

405, Hon'ble Supreme Court explained the purpose of framing question of law in following manner:

- "a) The purpose of framing of substantial question of law is to give the parties an opportunity to come prepared on that particular question.
- b) When a substantial question of law is formulated by the Court then the same must be made known to parties and thereafter they have to be given an opportunity to advanced arguments thereon.
- c) If any additional questions were framed at the time of hearing, the Court must hear the parties on that question as well."

15. Hon'ble Court in case of **Chandrabhan Vs. Saraswati 2022 SCC Online (SC) 1273 (decided on 22.09.2022)** has summarised principle relating to Section 100 of CPC in following words:-

- "(i) the courts below have ignored material evidence or acted on no evidence;
- (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or
- (iii) the courts have wrongly cast the burden of proof."

16. In view of the discussion made hereinabove, no substantial question of law has been made out from the grounds raised by the appellant-plaintiff, therefore, the second appeal is sans merit and the same is liable to be dismissed.





17. In view of the discussion made hereinabove, the instant second appeal is hereby dismissed along with the pending application, if any.

18. The interim order, if any, stands vacated.

(ASHOK KUMAR JAIN),J

6/GAURAV (DA)

