RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Second Appeal No. 196/2026
CNR: RJHC010810712026 | URN: CSA / 574U / 2026

Dinesh Bhati S/o Chhinnu Lal, Aged About 58 Years, R/o Near Munni Maharaj Temple, Mansagar,mahamandir, Jodhpur

----Appellant

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Versus

1 Om Prakash S/o Ranishankar, R/o Mansagar, Mahamandir, Jodhpur.

2 Chhinnu Lal S/o Pusa Ram, Near Munni Maharaj Temple, Mansagar, Mahamandir, Jodhpur.

3 Smt Meema Bai W/o Chhinnu, Near Munnimaharaj Temple, Mansagar, Mahamandir, Jodhpur.

4 Himmat Singh @ Mikiya, Near Munnimaharaj Temple, Mansagar, Mahamandir, Jodhpur.

5 Pintu S/o Chhinnu Lal, Near Munni Maharaj Temple, Mansagar, Mahamandir, Jodhpur.

----Respondents

For Appellant(s) : Mr. Bhagat Dadhich
For Respondent(s) : Mr. Vivek Shrimali

HON'BLE MR. JUSTICE MANEESH SHARMA

Order

1.	Date of conclusion of Arguments	27.10.2026
2.	Date on which the order was reserved	27.10.2026
3.	Whether the full order or only operative part is pronounced	Full
4.	Date of pronouncement	30.10.2026

1. The present civil second appeal has been preferred by the appellant-defendants under Section 100 of the Code of Civil Procedure, 1908 (CPC), assailing the impugned judgment and decree dated 27.07.2026, passed by the learned First Appellate Court in Civil Appeal No.04/2021.

2. The brief facts germane to the present controversy, shorn of unnecessary details, are that the respondent-plaintiff instituted a civil suit for permanent injunction against the father of the present appellant, i.e., *Chhinulal*, before the learned Trial Court. It was averred

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in the plaint that the respondent-plaintiff is the absolute owner in possession of a plot situated near Shiv Mandir, Dando Ka Bas, Mahamandir, Jodhpur, having purchased the same vide a registered sale deed dated 27.11.2001 from its erstwhile owner, i.e., Babulal. It was further pleaded that defendant No.1, in collusion with other defendants, repeatedly attempted to forcibly dispossess the respondent-plaintiff from the suit property.

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3. The respondent-plaintiff asserted that despite multiple FIRs being registered against the defendants (resulting in challans and a prior conviction under Section 447 IPC), they continued to threaten and interfere with his peaceful possession and construction of a boundary wall. Accordingly, the respondent-plaintiff prayed for a decree of permanent injunction restraining the defendants from interfering with his use, occupation, and construction over the suit property.

4. Upon service in the said suit, the defendants filed a written statement, denying the averments made in the plaint, and stating that the suit property was originally purchased by the defendant No.1's father, in the name of Babulal. Defendant No. 1 claimed to be a tenant of his brother Babulal @ Rs. 50/- per month for over 17-18 years, utilizing the premises for tying cattle and storing fodder. It was averred that no rent receipts were ever executed due to their relationship as real brothers. The defendants further pleaded that they had no knowledge of the alleged sale deed executed in favour of the respondent-plaintiff and asserted that the present suit was a collusive attempt to illegally evict them from the tenanted premises without due process of law. Accordingly, they prayed for the dismissal of the suit.

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

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1. आया वादी वाद वर्णित विवादित भूखण्ड का वैध कब्जेधारी हैए तथा प्रतिवादीगण उसे विवादित भूखण्ड के उपयोग-उपभोग निर्माण आदि में बाधा उत्पन्न कर रहे है?

....वादी

2. आया प्रतिवादीगण विवादित परिसर के संबंध में बाबूलाल का किरायेदार है?

...प्रतिवादीगण

3. आया वादी ने विवादित सम्पत्ति की सही मालियत ना बताकर गलत कोर्ट फीस पर वाद प्रस्तुत किया है?

...प्रतिवादीगण

4. अनुतोष?

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6. In order to substantiate the averments made in the plaint, the respondent-plaintiff examined himself as PW-1 (Omprakash), alongside PW-2 (Shyamsundar Bohra) and PW-3 (Babulal, the erstwhile owner) and produced as many as nine (9) documents on record.

7. *Per contra* the defendants examined DW-1 (Dinesh), DW-2 (Laxman Singh), and DW-3 (Chhinnulal), and produced thirteen (13) documents on record.

8. After appreciating the oral and documentary evidence adduced by both parties, the learned Trial Court, vide judgment and decree dated 15.02.2021, dismissed the suit instituted by the respondent-plaintiff.

9. Aggrieved thereby, the respondent-plaintiff preferred a civil regular appeal.

10. After hearing the respective arguments of the parties and examining the record, the learned First Appellate Court allowed the appeal, reversed the findings of the learned Trial Court, and decreed the suit for permanent injunction in favour of the respondent-plaintiff, holding thereby that the respondent-plaintiff had successfully proved his possession through oral and documentary evidence, and the defendants had failed to prove their possession over the suit property.

11. Aggrieved by the reversal of the Trial Court's decree by the First Appellate Court, the appellant, who is the son of defendant No.1, has preferred the present civil second appeal before this Court.

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12. Learned counsel for the appellant submits that the learned First Appellate Court erred in reversing the well-reasoned judgment and decree of the learned Trial Court. He further submits that the appellant-defendants have been in continuous, settled, and uninterrupted physical possession of the suit property for more than 25 years, also using the said property to look after his cattle, and that the respondent-plaintiff has never been in possession of the suit property. He further submits that the learned First Appellate Court erred in overlooking the fact that the underlying suit, filed as a simpliciter suit for injunction, is not maintainable. He, therefore, prays that the impugned judgment and decree dated 27.07.2026 may kindly be quashed and set aside.

13. *Per* contra, learned counsel for the respondent while supporting the impugned judgment and decree, submits that the learned First Appellate Court has rightly appreciated the evidence on record while reversing the findings of the learned Trial Court. He further submits that the appellant-defendants wants to illegally occupy the property of the respondent-plaintiff, which is a fact conclusively established by their prior conviction for criminal trespass under Section 447 IPC, 1860, vide order dated 21.03.2001 in Criminal Case No.243/1999, as well as the conviction under Sections 323, 341, 143 and 447 of IPC, 1860, vide order dated 14.09.2018 in Criminal Case No.427/2009, for attempting to forcibly grab the subject plot from the erstwhile owner as well as the current owner, i.e., the respondent-plaintiff. He further submits that the learned Trial Court had seriously erred by placing heavy reliance upon a Commissioner's Report prepared in an entirely different and unconnected judicial proceeding (a prior suit instituted by Chhinnulal against Babulal) which was later on dismissed as withdrawn. He, therefore, prays that the present civil second appeal, being devoid of any merit or substantial question of law, be dismissed.

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14. In order to buttress his contention, learned counsel for the respondent places reliance upon the judgments passed by the Hon'ble Apex Court in ***Russi Fisheries Pvt. Ltd. & Anr. Vs. Bhavna Seth & Ors.***[1], ***Gurnam Singh (D) by Lrs. & Ors. Vs. Lehna Singh (D) by Lrs.***[2], ***Santosh Hazari Vs. Purushottam Tiwari (D) by Lrs.***[3], ***Shri Holiyappa & Ors. Vs. Shekappa Shivappa Katenhalli & Ors.***[4], ***Kondiba Dagadu Kadam Vs. Satvikbai Sopan Gujar***[5].

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15. Heard learned counsel for the parties and perused the material available on record.

16. A bare perusal of the record reveals that the respondent-plaintiff's case rests upon his lawful purchase of the subject property from its erstwhile owner, Babulal, vide a registered sale deed dated 27.11.2001. It is also evident that the appellant-defendants have continuously exhibited a hostile intent to dispossess the rightful owners from the suit property.

17. This hostile intent is conclusively established by conviction for the offence of criminal trespass under Section 447 of the IPC, 1860, vide order dated 21.03.2001 in Criminal Case No. 243/1999 (albeit being granted the benefit of probation), and the subsequent conviction under Sections 323, 341, 143, and 447 of the IPC, 1860, vide order dated 14.09.2018 in Criminal Case No. 427/2009. Thus, the appellant's case cannot be accepted in the face of the aforesaid criminal convictions for repeated attempts to forcibly grab the subject plot from the erstwhile owner-*Babulal* as well as the current owner, i.e., the respondent-plaintiff.

18. It has further come on record that the *ex-parte* Commissioner's Report, which was the basis of the learned Trial Court's order, was

1 2026 LiveLaw (SC) 402
2 Civil Appeal No.6567/2014
3 AIR 2001 SC 965
4 Civil Appeal arising out of Special Leave to Appeal No(s).25407-25408/2017
5 AIR 1999 SC 2213

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prepared behind the back of the respondent-plaintiff, that too in a prior civil suit instituted by the father of the present appellant (Defendant No.1) originally filed against the erstwhile owner, *Babulal*, which was ultimately withdrawn by him. An isolated observation in the said report regarding the mere presence of cattle at a specific point of time in the past cannot by any stretch of imagination crystallize into substantive proof of continuous, settled, and lawful possession over the suit property, especially in the absolute absence of any corroborative documentary evidence.

19. The record further reveals that Defendant No. 1 (Chhinnulal) had independently instituted a suit for permanent injunction against Babulal, setting up a case of tenancy. Upon gaining knowledge, the respondent-plaintiff impleaded himself in the said proceedings, which eventually resulted in the rejection of the T.I. application filed along with the said suit, and later on, vide order dated 24.04.2007 was dismissed as withdrawn with liberty to file a fresh suit, although no such suit was ever filed by defednant No.1 (Chhinnulal).

20. Further, it is borne out from the record, in the examination dated 03.12.2018 of the petitioner's son-*Dinesh*, i.e., DW-1, the appellant's son has in his statement has deposed the following:

> "**.....**यह सही है कि वादग्रस्त परिसर का मालिक बाबुलाल था और उसी के नाम बेचान नामे की रजिस्ट्री थी।**.....**
>
> XXXX
>
> **.....**यह सही है कि बाबुलाल घॉची ने वादग्रस्त परिसर वादी को तारीख 27.11.2001 को बेचान कर दिया।**.....**
>
> XXXX
>
> **.....**प्रदर्श–1 बेचान नामा को किसी न्यायालय में चुनौती नहीं दी।**.....**
>
> XXXX
>
> **.....**वादग्रस्त परिसर बाबुलाल से किराये पर लेने बाबत् कोई सबूत, भाडा चिट्ठी, रसीद वगैरा नहीं है और न ही पत्रावली पर पेश किया है।**.....**

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.....वादग्रस्त बाडा खाली पडा है उस पर कोई ठाँव बने हुये नहीं है। यह सही है कि वादग्रस्त बाडे के अन्दर हमारा किसी का रहवास नहीं है। यह सही है कि वादग्रस्त बाडे पर हमारा ताला लगा है। इसका कोई दस्तावेज पत्रावली पर पेश नहीं किया है।....."

21. It is thus clear from the aforesaid testimony that DW-1, Dinesh, has unequivocally admitted that the erstwhile owner of the suit premises was *Babulal*, in whose name the registered sale deed originally stood, and that *Babulal* had subsequently sold the subject property to the respondent-plaintiff on 27.11.2001. He has further admitted that the said sale deed (Exhibit-1) has never been challenged by them before any court of law. Crucially, DW-1 has also conceded that there is no rent note, rent receipt, or any other documentary evidence available on record to substantiate their claim of having taken the premises on rent from Babulal. Furthermore, he has explicitly admitted that the suit premises is a vacant plot, and that none of the appellant-defendants actually reside therein, and although they claim to have put a lock on the premises, no documentary proof regarding the said lock or their possession has been adduced on record.

22. Additionally, in PW-3's (*Babulal*) examination, *Babulal*, has also deposed that he had sold the suit property to the plaintiff-*Om Prakash*, and handed over possession over the suit property. It is pertinent to note that there was no cross-examination by the defendant-appellant on this vital aspect.

23. The Hon'ble Apex Court in the matter of ***Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Ors.***[6], has held as under:

> *"14. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a*

6 AIR 2008 SC2033

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> *mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs."*

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24. Apart from the aforesaid legal proposition, in the factual matrix of the present case, the respondent-plaintiff has successfully established a clear and unambiguous title and possession over the suit property by virtue of the registered sale deed dated 27.11.2001, executed by the erstwhile owner. There exists no complex or complicated question of title requiring adjudication, especially when the appellant-defendants are proven to be mere wrongdoers with criminal antecedents to grab and illegally occupy the very same property.

25. Lastly, as regards the argument advanced by learned counsel for the appellant-defendants that a suit for injunction simpliciter is not maintainable without seeking relief of possession. It is pertinent to note that since the appellants have failed to prove their possession over the subject plot and the respondent-plaintiff has conclusively proved his possession over the subject plot, the argument put forth by the appellants cannot be accepted.

26. In view of the foregoing discussion, this Court is of the considered opinion that there is no legal infirmity, misreading of evidence, or perversity in the reasons recorded by the learned First Appellate Court while setting aside the judgment and decree dated 15.02.2021 passed by the learned Trial Court and decreeing the suit filed by the respondent-plaintiff. All the arguments advanced by the learned counsel for the appellants are essentially pure questions of fact, which do not give rise to any substantial question of law.

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27. Even from the judgments cited by Mr. Vivek Shrimali, learned counsel for the respondent-plaintiff, it is explicitly clear that the condition precedent for entertaining a second appeal is the existence of a substantial question of law.

28. A second appeal can be entertained only if a substantial question of law is involved in the case, and it is not within the domain of the High Court to re-appreciate the factual grounds on which the findings were arrived at by the last court of fact, being the first appellate court. As such, a second appeal cannot be decided on factual grounds; rather, the conditions mentioned in Section 100 of the CPC must be complied with to admit and maintain a second appeal.

29. In view of the discussions made hereinabove, no question of law, much less any substantial question of law, is involved in the present second appeal requiring interference by this Court in the exercise of its jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

30. In the absence of any substantial question of law, the impugned judgment and decree passed by the learned First Appellate Court stands confirmed. As a result thereof, the present civil second appeal, being devoid of merit, is hereby dismissed with no order as to costs.

31. As a necessary corollary, all pending application(s), if any, shall stand disposed of.

(MANEESH SHARMA),J

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