



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

S.B. Civil Miscellaneous Appeal No. 1566/2021

Meeta Agarwal D/o Shri Meenalal Agarwal W/o Shri Manojkumar  
Agarwal, R/o Plot No. 2, Sector No. 3, Jawahar Nagar, Jaipur.

----Plaintiff/Appellant

Versus

1. Hathroigari Grah Nirman Sehkari Samiti, D-20,  
Meeramarg, Banipark, Jaipur Through President Shri  
Rampratap S/o Shri Jagdish Prasad Sen,
2. Kajod Singh S/o Umed Singh, R/o Arjun Nagar,  
Durgapura, Jaipur.
3. Assistant Engineer, Rajasthan State Vidhyut Nigam,  
Mansarovar, Jaipur.
4. Rajmata Gayatri Devi W/o Late Shri Mansingh Ji, R/o  
Lillypool, Tonk Road, C-Scheme, Jaipur.
5. Mitra Grah Nirman Sehkari Samiti Through President  
Rameshwar Kumawat, Pyramid Properties And  
Investment, Near Kishor Misthan Bhandar, Police Station  
Sodala, Jaipur.
6. Jaipur Development Authority, Jaipur Through Secretary,  
JDA Circle Jawahar Lal Nehru Marg, Jaipur.
7. Deependra Sing Alias Banna S/o Shri Bacchan Singh, R/o  
4 A, SMS Colony, B-Block, Durgapura, Maharani Farm,  
Mansarovar, Jaipur.

----Defendants/Respondents

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For Appellant(s) : Mr. Behari Lal Agarwal  
Mr. Akash Gupta

For Respondent(s) : Mr. Bajrang Lal Choudhary

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**HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

**Judgment**

**04/01/2022**

**Reportable:**

This appeal is directed against the order dated 17.08.2021  
passed by the Court of learned Additional District and Sessions



Judge No. 9, Jaipur Metropolitan -II, Jaipur (for short 'the learned court below') in Civil Suit No. 56/2020 (484/2012) (36/2008) CIS No. 1551/2014 titled as Meeta Agarwal vs. Hathroigari Grah Nirman Sehkar Samiti and Ors. by which the application filed by the defendants respondents has been allowed and the plaint has been ordered to be returned under Order 7 Rule 10 CPC for filing the same before the Competent Court.

Before deciding the controversy, it is necessary to mention the facts of the case. The plaintiff-appellant (hereinafter referred as the 'plaintiff') filed a suit for declaration, possession, damages, mandatory and permanent injunction with regard to the disputed property described in Para 1 of the plaint. It was stated in the plaint that the disputed property was purchased by the plaintiff from one Balram vide agreement dated 04.01.1992 and the possession of the same was handed over to the plaintiff by said Balram. On 15.06.1996, allotment letter was also transferred in favour of the plaintiff by the defendant. Thereafter, boundary wall was constructed around the disputed property. When the father of the plaintiff visited the site on 03.02.2006, then he found that certain Land Mafias had broken the locks of the plot by trespassing upon it. When he asked them about the right, title of the property in question, then they started quarreling with the father of the plaintiff. An FIR was also lodged in this regard and finally the instant suit has been filed before the learned court below.

Para 24 and 25 of the plaint deals with the valuation of the suit and jurisdiction of the Court, which read as under:-

"24- यह कि बलिहाज मालियत दावा बाबत घोषणा रूपये 400/- कायम की जाकर न्याय शुल्क रूपये 30/- रु बाबत आज्ञात्मक निषेधाज्ञा रूपये 400/- कायम की जाकर न्याय शुल्क 30/- रूपये व तुड़वाने अतिक्रमण तथाकथित कोटडी की भूमि की मालियत



10,000/-रुपये कायम की जाकर न्याय शुल्क रूपये 250/- एवं बाबत बेदखली व दिलाये जाने कब्जा वादीनी को आवंटित भूखण्ड की खरीद कीमत राशि रूपये 20,000/-रुपया कायम की जाकर न्याय शुल्क 750/-रुपया एवं दिनांक 03.02.2006 को जबकि प्रतिवादी संख्या 2 व 7 द्वारा वादीनी के उक्त भूखण्ड पर अवैध रूप से अतिक्रमण कर कोठडी का निर्माण किया गया तब से रूपये 1000/-रुपये प्रतिमाह की दर से कोठडी की भूमि के हर्जा इस्तेमाली के रूप में दावा दायरी तक 26 माह का हर्जा इस्तेमाली रूपये 26,000/-रुपया अक्षरे छबबीस हजार रूपये कायम किए जाकर न्याय शुल्क रूपये 1200/- पर वाद-पत्र प्रस्तुत है। इस प्रकार कुल कोर्ट फीस 2260/-रुपये पर दावा हाजा प्रस्तुत है।

25- यह कि दावा हाजा बलिहाज मालियत दावा व स्थिति सम्पत्ति मुकदमा काबिले समाप्त अदालत हाजा है।”

The defendants respondents (hereinafter referred as the defendants) submitted written statement of denial to the plaintiff and denied the averments made in the plaint. Reply of the defendant with regard to Para Nos. 24 and 25 of the plaint is as under:-

“24- यह कि वाद पत्र की मद संख्या-24 गलत, बेबुनियाद एवं आधारहीन होने से कतई स्वीकार नहीं है। वादी द्वारा वादपत्र का मूल्यांकन गलत रूप से करते हुए कम न्याय शुल्क अदा किया है तथा विवादित सम्पत्ति का मूल्यांकन किस आधार पर किया है। वर्णित नहीं किया है। ऐसी सूरत में वादी का वाद पत्र कानूनन चलने योग्य नहीं है।

25- यह कि वाद पत्र की मद संख्या-25 कानूनी होने के कारण जवाब मोहताज नहीं है।”

Bare perusal of the aforesaid paras clearly indicates that no such objection was taken by the defendants with regard to pecuniary jurisdiction of the Court.

Counsel for the plaintiff argued that the plaintiff had filed the instant suit way back in the year 2008 and written statement was submitted by the defendants and no objection was taken by defendants with regard to the pecuniary jurisdiction of the Court and thereafter, on the basis of the pleadings of the parties several issues were framed. Issue No.6 is relevant, which is as under:-

6- आया वादीनी द्वारा वाद पत्र का मूल्यांकन गलत रूप से करते हुए कम न्याय शुल्क अदा किया गया है तथा विवादित सम्पत्ति का मूल्यांकन किस आधार पर किया है वर्णित नहीं किया। जिस आधार पर वादीनी का वाद काबिले खारिजी है?

Counsel for the plaintiff further argued that after recording the evidence of both the sides on all the issues, the case was posted for final arguments and at that stage the defendants



submitted an application on 10.08.2021 stating therein that the learned court below has no pecuniary jurisdiction to hear and decide the suit, hence, the suit is liable to be dismissed. Counsel further submits that overlooking the provisions contained under Section 21 of the Code of Civil Procedure, the learned court below has erroneously accepted the application filed by the defendants and passed the impugned order by returning the plaint to the plaintiff under Order 7 Rule 10 CPC for filing the same before the Competent Court. In support of his contentions, learned counsel for the plaintiff has placed reliance upon the judgment delivered by Hon'ble the Apex Court in *Harshad Chiman Lal Modi vs. D.L.F. Universal Ltd. and Anr. Reported in 2005(3) Civil Court Cases 711* wherein the Hon'ble Supreme Court has taken a view that the objection with regard to territorial and pecuniary jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. Lastly, counsel for the plaintiff argued that 13 years have passed after filing of the suit and in case the impugned order is allowed to stand as it is then the plaintiff would be seriously prejudiced. Hence, the impugned order be quashed and set aside.

Per contra, counsel appearing for the defendants opposed the arguments raised by the counsel for the plaintiff and stated that from bare perusal of the contents of the plaint it is clear that the learned court below has no pecuniary jurisdiction to hear and decide the suit. Hence, the learned court below has rightly passed the impugned order. Counsel further submits that the objection regarding the pecuniary jurisdiction can be taken at any stage even before the pronouncement of the judgment. In support of his contentions, counsel for the defendants has placed reliance upon



the judgments delivered by Hon'ble the Apex Court in *M/s EXL Careers and Anr. vs. Frankfinn Aviation Services Private Limited* reported in AIR Online 2020 SC 672, *Devendra Singh vs. Bhole Ram* reported in AIR 1991 Allahabad 157, *Narendra Kumar Soni vs. M/s Sun Shine Roadways and Ors.* reported in AIR 1999 Delhi 189 and *Chandra Prem Shah and Ors. vs. K. Reheja Universal Private Limited* passed by the Bombay High Court in Civil Application No. 469/2014.

Lastly, counsel for the defendants argued that the learned court below has ample jurisdiction under Order 14 Rule 5 to frame any additional issue at any stage before disposal of the suit. So, he prayed for rejection of the appeal.

I have heard learned counsel appearing for both the parties and perused the documents available on record.

It is not in dispute that the suit was filed in the year 2008 and on bare perusal of Para Nos. 24 and 25 of the plaint, it is clear that the valuation of the suit was mentioned and the plea was also taken therein that the learned court below is competent to hear and decide the controversy in question on the basis of the valuation determined in the plaint by the plaintiff. When the written statement was submitted, no such plea was ever taken by the defendants in their written statement and it is settled position of law as per Section 21 of the Code of Civil Procedure that the objection with regard to pecuniary jurisdiction shall be taken at the first instance at the earliest possible opportunity. Section 21 of the Code of Civil Procedure deals with jurisdiction, which is as under:-

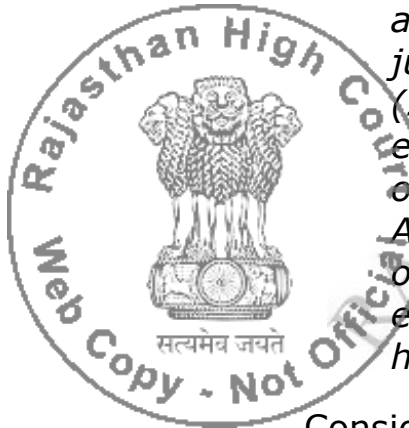
**"Objections to jurisdiction.-** (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such



*objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.*

*(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.*

*(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."*



Considering the above mandatory position of law, the Hon'ble Apex Court has decided the aforesaid issue in the case of *Harshad Chiman Lal Modi vs. D.L.F. Universal Ltd. and Anr.* Reported in 2005(3) Civil Court Cases 711. Para 27 of the aforesaid judgment is relevant, which is as under:-

*" We are unable to uphold the contention. The jurisdiction of a Court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."*

It is also not in dispute that no such objection was taken by the defendants at the earliest stage or not during the course of



trial when it reached to its final stage. Now at the stage of final disposal, the application has been submitted which has been accepted by the learned court below by overlooking the mandatory provisions contained under Section 21 of the Code of Civil Procedure. The judgments cited by the counsel for the defendants are not applicable and the same are distinguishable looking to the facts of this case. Hence, the impugned order is not sustainable in the eye of law and the same is liable to be quashed and set aside.

In view of the above discussions, this appeal deserves to be allowed and the impugned order dated 17.08.2021 passed by the Court of learned Additional District and Sessions Judge No. 9, Jaipur Metropolitan-II, Jaipur in Civil Suit No. 56/2020 (484/2012) (36/2008) CIS No. 1551/2014 titled as Meeta Agarwal vs. Hathroigari Grah Nirman Sehkari Samiti and Ors. is quashed and set aside. The application filed by the defendants is dismissed and the suit is ordered to be restored to its original number.

The parties are directed to appear before the trial Court on 27.01.2022.

The learned court below is directed to dispose of the underlying suit pending before it since 2008 within a period of four months from the date of presentation of a certified copy of this order.

Adjournments in the suit should not be granted without just cause and when unnecessarily warranted be, by a reasoned order or on a proper application in writing there being filed to the satisfaction of the trial Court. The learned court below should also adhere to the principles laid down by the Hon'ble Apex Court in the case of M/s. Shiv Cotex vs. Tirgun Auto Plast Pvt. Ltd. & Ors.



reported in 2011 (9) SCC 678, wherein it has been held that adjournments should be ordinarily limited to three/four times in the life of the suit as also as per the provisions of Order 17 CPC.

All pending applications, if any, stand disposed of.

**(ANOOP KUMAR DHAND),J**



RAJASTHAN HIGH COURT



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