



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

S.B. Civil Second Appeal No. 33/2021

1. Nand Kishore :

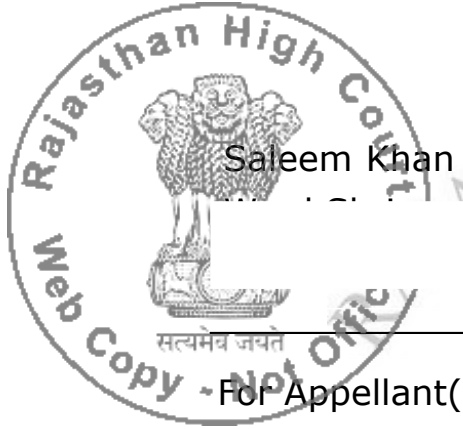
2. Ram Janki Bai

----Appellants

Versus

Saleem Khan

----Respondent



For Appellant(s) : Mr. Abhishek Bhardwaj

For Respondent(s) : Mr. D.K. Dixit

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

Reserved on

: 05/03/2022

Pronounced on

: March 15th, 2022

BY THE COURT:

1. This second appeal arises against judgment and decree dated 27.09.2017 passed by Additional Senior Civil Judge No.7, Kota in suit No.25/2015, affirmed in first appeal vide judgment dated 11.02.2021 passed by the District Judge, Kota in appeal No.118/2017 whereby civil suit for possession and permanent injunction has been decreed against appellants-defendants.

2. The suit property is House No.170, ward No.30, Jogipada, Shripura, Kota over which appellants are having possession.

3. Appellants-defendants have filed an application (IA No.1/2022) under Order 41 Rule 27 CPC to place on record copy of judgment dated 04.09.2006, passed by Civil Judge (Junior



Division), South Kota in Civil Suit No.09/2006 and copy of order dated 23.07.2012 passed by Additional District Judge No.4, Kota in Civil Misc. Appeal No.83/2008, affirming the judgment dated 04.09.2006.

4. Counsel for defendants submits that in relation to the suit property, appellant No. 2 Ram Janki Bai with her sister Pushpa Bai file a Civil Suit for permanent injunction against their father namely Devkishan, claiming *inter alia* that suit property is their ancestral property and defendant be restrained not to dispossess plaintiffs. The suit was decreed vide judgment dated 04.09.2006 in the manner that the defendant would not dispossess the plaintiffs without following the process of partition and due course of law. During pendency of said suit, Devkishan sold the said property to the present respondent-plaintiff through sale deed dated 23.08.2006. Later on, Devkishan filed an appeal to set aside the judgment dated 04.09.2006, which was dismissed vide order dated 23.07.2012 and the judgment and decree dated 04.09.2006 has been affirmed.

5. Learned counsel for appellants submits that copy of judgment dated 04.09.2006 as affirmed by appellate court is material and relevant evidence to the issue involved in the present second appeal. Respondent-plaintiff filed the civil suit for possession against appellants alleging them to be trespasser in the suit property, whereas in the judgment dated 04.09.2006, their possession has been protected treating them as co-owner. The respondent derives his right, title and interest in the suit property from Sh. Devkishan, plaintiff, in the plaint suit, father of appellant, against whom the judgment dated 04.09.2006 was passed and thus the same applies to the respondent-plaintiff as



well. Learned counsel for appellants submits that although in written statement, reference about the suit for injunction filed by appellants was given, but copies of judgment could not be produced on record despite due diligence. He submits that both documents are certified copies of judgment passed by Judicial Courts, which are not required to be proved, and the same are relevant to the issue involved herein and would be helpful to decide the present appeal. Therefore, the copies of both judgments be taken on record.

6. Heard learned counsel for both the parties. In case of **Wadi Vs. Amilal and Ors. reported in [(2015) 1 SCC 677]**, the Hon'ble Supreme Court has propounded that if any additional documents are relevant and helpful to adjudicate an issue, the same can be taken on record. In the opinion of this court, copies of judgment dated 04.09.2006 and order dated 23.07.2012, have material bearing on issues involved in the present appeal. No additional evidence is required to be recorded to prove the additional documents, as the same are certified copies of the judgments passed by Judicial Courts. Thus, in the interest of justice, the application under Order 41 Rule 27 CPC is allowed. Certified copies of judgment dated 04.09.2006 and order dated 23.07.2012 are taken on record. The respondent would have right to produce rebuttal evidence, if any, to such additional documents.

7. Appellants have also filed another application (I.A. No.02/2022), seeking to add certain additional facts and grounds in the memorandum of second appeal. The appeal has not been admitted. The facts and grounds mentioned in the memorandum of appeal do not amount to improvement of basic pleadings of parties and even can be argued orally, therefore, if additional facts



and grounds as proposed by the appellants are allowed to be amended in the memorandum of second appeal, no prejudice would cause to the respondent, as he will have full opportunity to refute additional facts and grounds also while opposing other grounds of second appeal to oppose the admission of second appeal. In that view of manner, the application seeking amendment in memo of appeal, is allowed. Appellants may file amendment memo of appeal within a period of two weeks.

8. Since this court has allowed the application under Order 41 Rule 27 CPC giving liberty to respondent to file documents/evidence in rebuttal and has also allowed to file amendment memo of appeal, therefore, appeal is required to be heard afresh for admission, after filing amended memo of second appeal and considering the additional documents as well as documents in rebuttal, if any.

9. List the appeal for admission after six weeks.

10. Meanwhile, execution of impugned decree for possession dated 11.02.2021 shall remain stayed and both parties would maintain status quo as to alienation and possession in relation to suit property.

सत्यमेव जयते (SUDESH BANSAL),J

Sachin/