
(2022) 02 RAJ CK 0160

In the Rajasthan High Court

Case No : S.B. Civil Second Appeal No. 139 Of 2008

Jagannath Prasad Sharma And Others

APPELLANT

Vs

Devendra Kumar Jindal And Others

RESPONDENT

Date of Decision : 02-02-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100, Order 22 Rule 3, Order 22 Rule 4
Limitation Act, 1963 — Section 5

Citation : (2022) 02 RAJ CK 0160

Hon'ble Judges : Prakash Gupta, J

Bench : Single Bench

Advocate : MM Ranjan, Rohan Agarwal, Aakash Gupta, BL Agarwal

Final Decision : Disposed Of

Judgement

Prakash Gupta, J

Application No. 2164 dated 28.01.2013

Matter comes up on an application under Order 22 Rule 4 CPC for taking the legal representatives of respondent Devendra Kumar, who said to be expired on 23.11.2012, on record.

For the reasons mentioned in the application, the same is allowed and legal representatives of the deceased respondent Devendra Kumar, detailed in para two of the application, are taken on record. Amended cause title, which has already been filed, is also taken on record.

Applications No. 1/2021 and 2/2021

Matter come up on two applications which are as follow:-

Application (bearing No.1/2021) is filed under Order 22 Rule 3 CPC for taking on record the legal representatives of deceased appellant Jagannath Prasad Sharma on record, who said to be expired on 06.05.2020, his legal representatives are

detailed in para No. 1 of the application. Application is not filed within the prescribed time of limitation and an application (bearing No.2/2021) has been filed under Section 5 of the Limitation Act for condonation of delay in filing the application under Order 22 Rule 3 CPC.

For the reasons mentioned in the application, the application under Section 5 of the Limitation Act is allowed and delay in filing application under Order 22 Rule 3 CPC is hereby condoned.

For the reasons mentioned in the application, application under Order 22 rule 3 CPC is also allowed and the abatement, if any, is set aside and the legal representatives of the deceased appellant Jagannath Prasad Sharma who are detailed in para No.1 of the application, are taken on record. Amended cause title which has already been filed, is taken on record.

S.B. Civil Second Appeal No. 139/2008

The instant Civil Second Appeal under Section 100 CPC has been filed by the defendants-appellants (for short 'the defendants') aggrieved by the judgment and decree dated 16th February, 2008 passed by the Court of learned Additional District Judge No. 1, Ajmer whereby the said court dismissed the appeal filed by the defendants and confirmed the judgment and decree dated 27th March, 1997 passed by the Court of learned Additilnal Civil Judge (Junior Division), Ajmer City (North), Ajmer in Civil Suit No.19/1996.

Learned senior counsel for the defendants, Mr. MM Ranjan, after arguing the matter at some length, on instruction of his clients, has not pressed this appeal on merits. The only prayer made by him is that time upto 31.12.2025 may kindly be granted to the defendants to vacate the tenanted/suit premises (for short 'the premises').

Learned counsel appearing for the respondentsplaintiffs (for short 'the plaintiffs') Mr. Akash Gupta on instructions of his clients has no objection in granting the time as prayed for by the learned counsel for the defendants for vacating the premises.

In view of the aforesaid submission of learned counsel for the parties, this second appeal is being decided in the following terms:-

1. The defendants shall be entitled to continue in possession of the premises uptill 31.12.2025 but not beyond that, subject to condition that they will hand over the vacant and peaceful possession of the premises to the plaintiffs on or before 31.12.2025.

2. The defendants shall deposit arrears of mesne profit, if any, due towards him up to 31.12.2021 @ Rs.130/- per month within a period of one month from today with the Bank account of the plaintiffs and thereafter, from 1st January, 2022 the defendants shall continue to deposit the mesne profit @ Rs.5000/- per month with the bank account of the plaintiffs by 15th of each month.

3. The defendants shall not alienate or otherwise create third party right or hand over possession of the premises in question to any other person.

4. If the defendants fail to deposit the mesne profit consecutively for four months, the plaintiffs shall be at liberty to execute the decree without any further reference to the Court.

Further, the defendants shall submit an undertaking on oath incorporating the aforesaid conditions before the trial Court within a period of four weeks from the date of this judgment. In case, the defendants fail to submit the undertaking as aforesaid within four weeks from today and/or commits breach of any of the conditions of this judgment, the plaintiffs shall be entitled to execute the decree forthwith and obtain possession of the premises in accordance with law without further reference to the Court and also it will be open for the plaintiffs to initiate contempt proceedings in the Court.

The second appeal stands disposed of accordingly. Consequently, upon disposal of the second appeal, interim order, if any, stands vacated and the stay application and other pending applications, filed therewith, also stand disposed of.