IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

SECOND APPEAL No. 376 of 2021

BABLU ALIAS SHIVRAJ SINGH

Versus

RAJINDER SINGH RATAN (DEAD) THR. LRS. SMT. KULDEEP KAUR RATAN AND OTHERS

Appearance:

Shri Chandrahas Dubey – Advocate for the appellants.

Ms. Amrit Kaur Ruprah & Shri Sardar Avtar Singh - Advocates for the respondents 1-2.

Reserved on :- 10.07.2025
Pronounced on :- 15.07.2025

JUDGMENT

This second appeal has been preferred by the appellant/defendant challenging the judgment and decree dated 04.02.2021 passed by 29th Additional District Judge, Jabalpur, in Regular Civil Appeal No.7/2019 reversing the judgment and decree dated 29.11.2018 passed by 2nd Civil Judge Class-II, Jabalpur in Civil Suit No.47-A/2015, whereby trial Court dismissed the suit in its entirety and upon filing civil appeal by the plaintiff, first appellate Court has decreed the suit for eviction on the ground of bonafide requirement of residence available under Section 12(1)(e) of the M.P. Accommodation Control Act, 1961 (in short "the Act").

2. In short, the facts are that the original plaintiff -Rajinder Singh (now dead, through LRs), instituted a suit for eviction with the allegations that the plaintiff has purchased the suit house admeasuring 915 sq.ft., over which Kachcha house is constructed on an area 368 sq.ft., from defendant - Bablu @ Shivraj Singh's brother Indrajeet Kushwaha vide registered sale deed dated 31.12.2012 (Ex.P/1) and received possession. It is also alleged that

after purchase of the house, the same was given on rent to the defendant on 01.03.2013 on the recommendation of his brother Indrajeet. Although the defendant paid rent for a period of three months, but thereafter did not pay any rent despite service of demand notice dated 03.02.2015. It is also alleged that the house is in dilapidated condition and is not suitable for residence of human being, but the defendant is residing in the house at the risk of his life. It is also alleged that the defendant has also committed nuisance by willfully damaging property, engaging in acts of vandalism within the house and abusing the plaintiff. It is also alleged that the plaintiff is in need of the house for residence and there is no other alternative suitable vacant accommodation for his need. On *inter alia* allegations, the suit was instituted.

3. The defendant appeared and filed written statement denying the plaint allegations and contended that the defendant is not tenant in the suit house, but he is in possession of the house as owner, because the house in question belongs to his father Pahalwan, who purchased the same in the name of Indrajeet vide registered sale deed dated 25.11.1983 (Ex.P/2) and as such, he had no right to sell the house exclusively. As such, denying all the averments of the plaint, suit was prayed to be dismissed.

4. On the basis of pleadings, trial Court framed issues and recorded evidence of the parties. In support of his case, the plaintiff examined Rajinder Singh Ratan (PW/1), Indrajeet Singh (PW/2), Trilok Singh (PW-3) & Ranbeer Singh (PW/4) and produced documentary evidence (Ex.P/1 to P/16). The defendant also examined himself-Bablu @ Shivraj Singh (DW-1) & Ramcharan Yadav (DW-2) and produced documentary evidence (Ex.D/1 to D/4). After hearing the parties, trial Court upon due consideration of the material available on record, held that there is no relationship of landlord and tenant in between the parties and dismissed the suit by holding that the plaintiff is not in need of the house and it is also not proved that the

defendant has committed defaults in making payment of rent and the house is not suitable for residence.

5. Upon filing appeal by the plaintiff/respondent/landlord, first appellate Court has reversed the judgment and decree of trial Court and decreed the suit vide impugned judgment and decree dated 04.02.2021 holding thereby that the defendant has made defaults in making payment of rent and the plaintiff is in need of the suit accommodation for residence and there is no other alternative accommodation available with the plaintiff. It is also held that the house is in dilapidated condition and cannot be used without repairs. Apparently, on the basis of sale deed and oral evidence of the plaintiff's witnesses, first appellate Court has assumed that there is relationship of landlord and tenant in between the parties.

6. Against the aforesaid judgment and decree passed by first appellate Court, second appeal was preferred by the appellant/defendant, which was admitted for final hearing on 14.03.2023 on the following substantial questions of law :-

> "1.Whether learned first appellate Court has erred in reversing the judgment and decree passed by learned trial Court just contrary to the law settled by the Apex Court in the case of Santosh Hazari Vs. Purushottam Tiwari (Dead) By LRs **(2001) 3 SCC 179** ?
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> 2. Whether in absence of any document, learned first appellate Court has erred in holding the relationship of landlord and tenant between the parties to the suit ?
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> 3. Whether learned first appellate Court has erred in granting decree of eviction on the grounds available under section 12(1) of the M.P. Accommodation Control Act, 1961 ?"

7. At the outset, learned counsel for the respondents/landlord submits that after passing of decree of eviction by first appellate Court, the respondents have been put in possession even before admission of the

second appeal, therefore, nothing remains to be decided in the instant second appeal as the same has become infructuous.

8. Learned counsel for the appellant submits that although the decree has been executed in hasty manner by evicting the appellant/defendant, but only on that ground the second appeal cannot be dismissed and if the second appeal succeeds, then the appellant is having right of restoration of possession as per Section 144 of the CPC.

9. Learned counsel for the appellant also submits that trial Court has while deciding the issue no.1, categorically held that in absence of any documentary evidence, like rent note, rent receipt or any other document or oral admission of the defendant, he cannot be said to have been inducted as a tenant in the suit house only on the basis of oral evidence adduced on behalf of the plaintiff and although the first appellate Court has reversed the judgment and decree of trial Court, but has not considered the reasonings recorded by trial Court in its judgment, which itself has vitiated the judgment and decree passed by first appellate Court. In support of his submissions, he placed reliance on the decision of Hon'ble Supreme Court in the case of Santosh Hazari Vs. Purushottam Tiwari (Dead) By LRs, **(2001) 3 SCC 179**. He also submits that merely on the premise that the plaintiff has purchased the house vide registered sale deed (Ex.P/1), does not entitle him to file the suit for eviction on the grounds available under Section 12(1) of the Rent Act and until and unless the plaintiff is able to establish relationship of landlord and tenant in between the parties, he cannot get decree of eviction. In support of his submissions, he placed reliance on the decision of Hon'ble Supreme Court in the case of Tribhuvanshankar Vs. Amrutlal, (**2014) 2 SCC 788** (para 33). Taking this Court to paragraphs 26 to 28 of the impugned judgment and decree passed by first appellate Court, he submits that admissible documentary evidence showing long possession of defendant in the suit house, produced by the defendant has been

ignored/discarded on the basis of inadmissible oral evidence. He further submits that the contention of the plaintiff regarding relationship in between the parties ought to have been discarded in absence of any documentary evidence. With these submissions, he prays for allowing the second appeal.

10. Learned counsel appearing for the respondents supports the impugned judgment and decree passed by first appellate Court and prays for dismissal of the second appeal with the further submissions that the finding on the question of relationship of landlord and tenant is a pure finding of fact and is not liable to be interfered with within the limited scope of second appeal provided under Section 100 of CPC. He also submits that re-appreciation of oral evidence is not permissible in the second appeal and first appellate Court has rightly granted decree of eviction after recording reasoned findings in paragraphs 26 to 28 of the impugned judgment in relation to relationship of landlord and tenant in between the parties. With these submissions, he prays for dismissal of the second appeal. In support of his submissions, learned counsel for respondents placed reliance on the decisions of Supreme court in the case of N.C. Daga Vs. Inder Mohan Singh Rana, (**2003) 1 SCC 453;** and Vinod Kumar Verma Vs. Manmohan Verma & Ors., **Civil Appeal Nos. 5220-5221/2008** as well as the decisions of Delhi High Court in the case of Neelam Sharma Vs. Ekant Rekhan, **2019 SCC OnLine Del 6487** and Om Prakash Ashok Kumar & Sons Vs. Shri Ajay Khurana, **2024 SCC OnLine Del 5228.**

11. Heard learned counsel for the parties and perused the record.

12. So far as the argument advanced by learned counsel for the respondents to the effect that as the decree of eviction has already been executed, therefore, the second appeal has rendered infructuous, is concerned, the right of appeal is a substantive right and is vested in a party at the time of institution of the suit or other original proceeding, which can be

taken away only by some specific law, meaning thereby execution of decree does not extinguish the right of appeal unless the law says so and even after execution of decree of eviction during pendency of appeal, the appeal can be heard on merits and the court retains the jurisdiction to decide the legal questions involved.

13. In the case of N.C. Daga **(supra)**, the Hon'ble Supreme Court in some special circumstances where the tenant had failed to make out a case for grant of leave to defend and upon execution of the concurrent order of eviction passed by Additional Rent Controller affirmed by Delhi High Court, refused to enter into merits of the case holding it to be a purely academic question, however it is nowhere said that the revision has become infructuous. Although, in the case of Vinod Kumar Verma **(supra)**, Hon'ble Supreme Court has upon taking possession by landlord dismissed the Civil Appeal as infructuous, but has not laid down the law that in every case, upon execution of decree or order, the appellant's right to appeal extinguishes or the Court cannot decide the same on merits. Other unreported decisions of Hon'ble Delhi High Court are also on the same proposition, but they have also not said anything about extinguishment of right of appeal upon execution of decree or order and if these decisions are followed as it is, then the provision of Section 144 of the CPC would become redundant.

14. In the case of Sushil Kumar Mehta vs. Gobind Ram Bohra, **(1990) 1 SCC 193,** the Hon'ble Supreme Court has held as under:-

> **"**28. It is seen from the dates mentioned that there is no delay in Filing the leave application. The leave application was filed within the limitation from the date of original order of dismissal of the revision or on a later date dismissing the review application. It is true that the writ petition was filed against the order in revision, but it does not preclude the appellant to contest its invalidity in the appeal under Article 136. **The decree was executed pending the special leave petition. This court would relieve the party from injustice in exercise of power under Article 136 of the Constitution when this court noticed grave miscarriage of justice.** It is always open to the appellant to take aid of S. 144 Civil Procedure Code for restitution. Therefore, merely because the decree has been executed, on the facts when we find that decree is a nullity, we cannot decline to exercise our power under Article 136 to set at nought illegal orders under a decree of nullity. The

appeal is accordingly allowed. But in the circumstances parties are directed to bear their own costs."

15. In the case of Atmaram Properties (P) Ltd. v. Federal Motors (P) Ltd., **(2005) 1 SCC 705,** the Hon'ble Supreme Court has held as under:-

"9. Dispossession, during the pendency of an appeal of a party in possession, is generally considered to be 'substantial loss' to the party applying for stay of execution within the meaning of clause (a) of sub-rule (3) of Rule 5 of Order 41 of the Code. Clause (c) of the same provision mandates security for the due performance of the decree or order as may ultimately be passed being furnished by the applicant for stay as a condition precedent to the grant of order of stay. However, this is not the only condition which the appellate Court can impose. The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate Court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not the statutory right conferred on the appellant. So also, an appellate Court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of stay must do equity for seeking equity. Depending on the facts and circumstances of a given case an appellate Court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. In South Eastern Coalfields Ltd. Vs. State of M.P. & Ors., (2003) 8 SCC 648, this Court while dealing with interim orders granted in favour of any party to litigation for the purpose of extending protection to it, effective during the pendency of the proceedings, has held that such interim orders, passed at an interim stage, stand reversed in the event of the final decision going against the party successful in securing interim orders in its favour; **and the successful party at the end would be justified in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it**. The successful party can demand (a) the delivery to it of benefit earned by the opposite party under the interim order of the High Court, or (b) compensation for what it has lost, and to grant such relief is the inherent jurisdiction of the Court. In our opinion, while granting an order of stay under Order 41 Rule 5 of the CPC, the appellate court does have jurisdiction to put the party seeking stay order on such terms as would reasonably compensate the party successful at the end of the appeal in so far as those proceedings are concerned. Thus, for example, though a decree for payment of money is not ordinarily stayed by the appellate Court, yet, if it exercises its jurisdiction to grant stay in an exceptional case it may direct the appellant to make payment of the decretal amount with interest as a condition precedent to the grant of stay, though the decree under appeal does not make provision for payment of interest by the judgment-debtor to the decree-holder. Robust commonsense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable facts, over and above the material available on record - all these provide useful inputs as relevant facts for exercise of discretion while passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the Constitution Bench in Olga Tellis and Ors. Vs. Bombay Municipal Corporation and Ors. - (1985) 3 SCC 545, -

"Common sense which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants"."

10 to 15 ****.**

16. We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having

been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy."

16. Similarly, in the case of The State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors., **(2009) 9 SCC 372**, the Hon'ble Supreme Court has held as under:-

"**73.** In an appeal or revision, stay of execution of the decree(s) passed by the court(s) below cannot be asked for as of right. While admitting the appeal or revision, it is perfectly open to the court, to decline to grant any stay or to grant stay subject to some reasonable condition. In case stay is not granted or in case the order of stay remains inoperative for failure to satisfy the condition subject to which it is granted, the tenant-in-revision will not have the protection of any of the provisions under the Rent Act relied upon by Mr. Lalit and in all likelihood would be evicted before the revision is finally decided. **In the event the revision is allowed later on, the tenant's remedy would be only by way of restitution.**

74 to 78. ****

79. Before concluding the decision one more question needs to be addressed: **what would be the position if the tenant's appeal/revision is allowed and the eviction decree is set aside? In that event, naturally, the status quo ante would be restored and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent.** That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side depending upon the result of the case."

17. In the case of Arun Harendra Deotale vs. Narhar Mahadeorao Pande, **2003 Supreme (Bombay) 312 = 2003 SCC Online Bom 1187,** a coordinate Bench of Bombay High Court has also held as under:-

"**16. But then the subsequent event that after the decree was passed by the trial Court and while the appeal was pending, the plaintiff got the possession of the suit flat in pursuance of the execution of the decree has certainly bearing on the claim of plaintiff for possession of the suit flat. It is no doubt true that the Appellate Court was well conscious of the fact that during the pendency of the appeal the defendant was dispossessed as the plaintiff had taken possession of the flat in execution proceedings.** That is how the Appellate Court observed in the judgment that if the plaintiff has taken possession in execution proceedings, then remedy lies in restitution under section 144 of the Civil Procedure Code. Therefore, the Appellate Court has thereby impliedly indicated that the defendant is entitled to the recourse for restoration of possession. **Therefore, though defendant has lost possession, that by itself does not make the appeal preferred by the plaintiff infructuous.** However, in this context another subsequent event has to be taken into consideration and it is the statement of fact made by the Counsel for the defendant that the suit flat is not in possession of the plaintiff. It appears that as the consequence of final decision of this Court in writ petition,

plaintiff has lost the possession. It is also clear between the parties to the suit that the suit flat is not presently in possession either of plaintiff or the defendant.

17 to 22. *****

23. It is significant to note that the Appellate Court has also considered this submission in its judgment. The Appellate Court while referring to the observations of this Court in 1985 Mh.L.J. page 548 supra observed in paragraph 5:

"**It is said that an appeal is a continuation of suit. The appeal is a part of the cause and does not create the cause. Appeal is a substantive right and the right of appeal accrues to the litigant and exists as on and from the date the lease commences. It should be noted that the Appellate Court is duty bound to take the note of the change in law and give effect to the same even after judgment of Court of first instance. As decree of the lower Court for eviction has not become final and it is under challenge in the present appeal. Mere fact that the plaintiff obtained the possession of the suit flat in the execution proceeding would not affect the legal right and the remedies under section 144 of the Code of Civil Procedure.**"

We have no hesitation in saying that the Appellate Court was right in holding that the suit filed by the plaintiff was having inherent defect and legal disability as no permission from the Rent Controller was sought. The fact that the plaintiff obtained possession in execution proceeding during the pendency of the appeal is of no consequence inasmuch as the pendency of the appeal by itself being continuation of the suit for all purposes and thereby there was no finality to the decree passed by the trial Court. The position would have been different, had the plaintiff taken possession in execution of the decree before the defendant filed the appeal in the first Appellate Court or defendant would have filed appeal."

18. In view of the aforesaid legal position, in my considered opinion the objection raised by learned Counsel for the respondents about maintainability of the second appeal, on account of execution of decree of eviction and dispossession of the appellant from the suit house, deserves to be and is hereby rejected.

Substantial questions of law no. 1 & 2:

19. It is an undisputed fact available on record that the plaintiff purchased the house from defendant-Bablu's brother Indrajeet Kushwaha vide registered sale deed dated 31.12.2012 (Ex.P/1). The plaintiff has come with the case that after purchase of the house, he was put in possession and thereafter on the request of defendant and upon recommendation of his brother Indrajeet (vendor of the house), the plaintiff inducted the defendant as a tenant on rent of Rs.1,000/- per month in the suit house and thereafter, the defendant also paid rent of three months, but thereafter did not pay the

rent despite service of demand notice. In support of the case of tenancy, the plaintiff has led only oral evidence to show that the defendant came in possession only in pursuance of oral agreement of tenancy and was not in possession prior to execution of sale deed.

20. As against the case of plaintiff, the defendant produced documentary evidence (Ex.D/1 to D/4) showing his possession in the house since prior to purchase of the house by plaintiff. The document (Ex.D/1) is a driving license in the name of Shivraj Singh @ Bablu issued on 30.08.2007 at the address of rented house '*Pachpedhi, South Civil Lines, Jabalpur*'. In this regard another document, i.e. identity card issued by Election Commission of India (Ex.D/2), has also been placed on record to show his possession in the house w.e.f. 15.07.1995. Similarly, the electricity bill (Ex.D/3) in the name of Smt. Chanda Kushwaha as well as ration card in his name has also been placed on record showing his possession and these documents have been discarded by first appellate Court for the reasons mentioned in paragraph 26 of the impugned judgment, which being based on wrong assumptions, surmises and conjectures, cannot be said to be correct. Further, while accepting the case of plaintiff, first appellate Court has given much emphasis to the statement of plaintiff's witnesses Indrajeet Singh and Trilok Singh solely on the ground that they are brothers of defendant, whereas the defendant has clearly stated that their interests are against him and with a view to defeat his rights, his brother Indrajeet had sold the rented/suit property to the plaintiff without delivery of possession.

21. The plaintiff has examined Trilok Singh (PW-3) as a witness of the oral tenancy, who is brother of the defendant, who in paragraph 4 of his statement, has clearly admitted that we four brothers reside with the father. He states that it is correct that Bablu is still residing in the suit house. He himself says that after registry (i.e. the sale deed), he is residing in the house. Further, the manner, in which the suggestions have been given to the

defendant regarding the documents (Ex.D/1 and D/2), itself is sufficient to prove possession of the defendant in the house since prior to execution of sale deed in favour of the plaintiff and not as a tenant after two months of the sale deed.

22. In the case of Tribhuvanshankar (supra) the Hon'ble Supreme Court has held as under :-

> **"30.** On a seemly analysis of the principle stated in the aforesaid authorities, it is quite vivid that there is a difference in exercise of jurisdiction when the civil court deals with a lis relating to eviction brought before it under the provisions of Transfer of Property Act and under any special enactment pertaining to eviction on specified grounds. Needless to say, this court has cautiously added that if alternative relief is permissible within the ambit of the Act, the position would be different. That apart, the Court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case. We respectfully concur with the aforesaid view and we have no hesitation in holding that the dictum laid down in Bhagwati Prasad (supra) and Bishwanath Agarwalla (supra) are distinguishable, for in the said cases the suits were filed under the Transfer of Property Act where the equitable relief under Order VII Rule 7 could be granted.
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> **31.** At this juncture, we are obliged to state that it would depend upon the Scheme of the Act whether an alternative relief is permissible under the Act. In Rajendra Tiwari's case the learned Judges, taking into consideration the width of the definition of the "landlord" and "tenant" under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, had expressed the opinion. The dictionary clause under the Act, with which we are concerned herein, uses similar expression. Thus, a limited enquiry pertaining to the status of the parties, i.e., relationship of landlord and tenant could have been undertaken. **Once a finding was recorded that there was no relationship of landlord and tenant under the Scheme of the Act, there was no necessity to enter into an enquiry with regard to the title of the plaintiff based on the sale deed or the title of the defendant as put forth by way of assertion of long possession.** Similarly, the learned appellate Judge while upholding the finding of the learned trial Judge that there was no relationship of landlord and tenant between the parties, there was no warrant to reappreciate the evidence to overturn any other conclusion. The High Court is justified to the extent that no equitable relief could be granted in a suit instituted under the Act. But, it has committed an illegality by affirming the judgment and decree passed by the learned trial Judge because by such affirmation the defendant becomes the owner of the premises by acquisition of title by prescription. When such an enquiry could not have been entered upon and no finding could have been recorded and, in fact, the High Court has correctly not dwelled upon it, the impugned judgment to that extent is vulnerable and accordingly we set aside the said affirmation."

23. Placing reliance on the aforesaid decision of Hon'ble Supreme Court in the case of Tribhuvanshankar (supra), this court also in the case of Jawahar Sen and others vs. Santosh Chadda (Dead) Thr. LRs. and others, **ILR 2024 MP 2087,** held as under :-

> "15. Although while deciding the issue No.2 courts below have held that there is relationship of landlord and tenant among the plaintiffs and defendants, but that finding has been recorded by courts below only on the premise that the plaintiffs have purchased the suit property by way of registered sale deed (Ex.P/1). In my considered opinion, in absence of any other material/admissible evidence, the findings of Courts below on issue no. 2, are not sustainable and in absence of any other supportive evidence, mere sale deed cannot be made basis for recording finding on the question of relationship of landlord and tenant. Further, the documents Ex.P-15 & Ex.P-16 being the mutation entries of the names of Bhargavas, have no relevance about relationship of landlord & tenant."

24. Comparative study of the findings recorded by first appellate Court in paragraphs 26 to 28 of its judgment as well as by trial Court in paragraphs 11 to 18 of its judgment, shows that first appellate Court has not properly considered the reasonings assigned by trial Court and has not even reversed the finding of possession before reversing the judgment and decree of trial Court, which being contrary to the decision of Hon'ble Supreme Court in the case of Santosh Hazari (**supra**), the impugned judgment and decree passed by first appellate Court are not sustainable.

25. Further, first appellate Court has also become much impressed with the document of title i.e. the sale deed executed by defendant's brother Indrajeet and on the wrong assumptions, surmises and conjectures that too without any evidence in support of the plea of oral tenancy, recorded finding of relationship of landlord and tenant in between the parties, which does not appear to be sustainable. Consequently, the substantial questions of law no. 1 & 2 are decided in affirmative and in favour of the appellant/defendant and against the respondents.

26. In view of the aforesaid discussion and upon due consideration of the entire material available on record, in my considered opinion, first appellate Court has committed an illegality in reversing the judgment and decree passed by trial Court and in decreeing the suit. Further, in view of decisions on substantial questions of law no. 1 & 2 and in view of the fact that neither of the parties has advanced arguments on the substantial question of law no. 3, there is no necessity to decide the same.

27. Resultantly, the **second appeal stands allowed** and by setting aside the impugned judgment and decree passed by first appellate Court, the judgment and decree passed by trial Court are hereby restored and the **suit of the respondents/plaintiffs stands dismissed**.

28. Pending application(s), if any, shall also stand disposed of.

(DWARKA DHISH BANSAL)
JUDGE

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