



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 1749/2024

Hussain S/o Shahabudeen, Aged About 63 Years, R/o Roon, Teh
Mundwa Dist. Nagaur.

----Appellant

Versus

1. Gram Panchayat Roon, Panchayat Samiti Mundwa Dist
Nagaur Through Sarpanch, Gram Panchayat Roon, Dist.
Nagaur.
2. Gram Panchayat Roon, Panchayat Samiti Mundwa Dist.
Nagaur Through Secretary/ Village Development Officer,
Gram Panchayatd Roon, Dist. Nagaur.

----Respondents

Connected With

S.B. Civil Misc. Appeal No. 1751/2024

Fakrudeen S/o Ramzan, Aged About 51 Years, R/o Roon, Teh
Mundwa Dist. Nagaur.

----Appellant

Versus

1. Gram Panchayat Roon, Panchayat Samiti Mundwa Dist
Nagaur Through Sarpanch, Gram Panchayat Roon, Dist.
Nagaur.
2. Gram Panchayat Roon, Panchayat Samiti Mundwa Dist
Nagaur Through Secretary/ Village Development Officer,
Gram Panchayat Roon, Dist. Nagaur.

----Respondents

S.B. Civil Misc. Appeal No. 1753/2024

Teja Ram S/o Shri Gamada Ram, Aged About 67 Years, R/o Roon
Tehsil Mundwa Dist. Nagaur

----Appellant

Versus

1. Gram Panchayat Roon, Panchayat Samiti Mundwa Dist.
Nagaur Through Sarpanch, Gram Panchayat Roon, Dist.
Nagaur
2. Gram Panchayat Roon, Panchayat Samiti Mundwa Dist.
Nagaur Through Secretary/village Development Officer,
Gram Panchayat Roon, Dist. Nagaur

----Respondents

For Appellant(s) : Mr. C.S. Kotwani assisted by
Mr. Mukesh Purohit & Mr. Gaurav
Khatri.

For Respondent(s) : Mr. Manish Tak with Mr. Dilip Solanki.

**HON'BLE MS. JUSTICE REKHA BORANA****Order****06/02/2025**

1. The present appeals have been filed against the order dated 06.03.2024 passed by the learned Additional District Judge No.1, Nagaur in Civil Misc. Case Nos.26/2024, 27/2024 & 25/2024 respectively whereby the respective applications under Order 39 Rules 1 & 2 read with Section 151, CPC as filed on behalf of the appellants-plaintiffs stood rejected.

2. The learned Trial Court while deciding the application made the following observations:

a) Although the plaintiffs claimed that they had filed applications for regularization of their old possession, no such applications were placed on record to substantiate the said fact.

b) As per the report dated 18.04.2023 of the Tehsildar, Mundwa, there was no *kutchha/pucca* residential house on the site in question and complete commercial activities were carried on the said land.

c) The appellants-plaintiffs had the other lands in their possession/ownership where they were actually residing.

d) There was no proof to the effect that the land in question was used for residential purposes for more than 40 years.

3. Day before yesterday, that is on 04.02.2025, learned counsel appearing for the appellants made a specific submission before this Court that although the plaintiffs were in old possession of the property in question for more than 40 years and had even applied for regularization of their possession to the concerned Gram



Panchayat, the same was not considered and further that the finding of the learned Trial Court to that extent is erroneous. He further submitted that the gram panchayat is in process of demolishing their dwelling houses where they are residing since last 40 years.

4. On the said submission been made by learned counsel for the appellants, this Court orally directed the counsel to place on record the applications whatsoever filed by the plaintiffs for regularization of their possession, and the documents to show their residential possession since last 40 years.

5. In pursuance to the oral direction of this Court, today, counsel for the appellants placed on record the alleged applications as filed by the plaintiffs for regularization of their possession.

6. A bare perusal of the applications reflect that the same pertain to the month of June 2024. Evidently, the order impugned is of 06.03.2024. Meaning thereby, there were no such applications available on record before the learned Trial Court and the finding of the learned Trial Court to that extent is correct and the submission as made by counsel for the appellants is clearly incorrect and fallacious.

7. Further, the said applications do not specify any particulars of the land qua which the same have been filed. Except the name of the applicants, all the other columns are blank, that is to say, they are as vague as can be.

8. Learned counsel for the appellants, before this Court too, raised the following grounds:



a) The possession of the plaintiffs on the land/property in question is old and their applications for regularization had been filed way back before the Gram Panchayat. However, no orders on the same have been passed.

b) The plaintiffs are residing with their family on the land in question and thus, the report dated 18.04.2023 of the Tehsildar, Mundwa is totally incorrect.

c) The Gram Panchayat is proceeding maliciously against the present plaintiffs as the complete process of removal of encroachment is targeted only against four persons.

d) The plaintiffs have no other land where they can reside.

9. Responding to the above arguments as raised by counsel for the appellants, counsel for the respondent-Gram Panchayat submits that there was no application for regularization ever filed by the plaintiffs to the Gram Panchayat till the date of passing of the order impugned dated 06.03.2024. Further, the applications filed in the Month of June 2024 also do not pertain to the disputed land in question rather they pertain to other/alternate lands of which the plaintiffs are in possession in the same village.

10. Counsel submits that none of the plaintiffs is residing on the disputed lands in question. Each of them is having an alternative land available in the same village and even have their dwelling houses constructed on the said lands where they are residing with their family.

11. To be particular, counsel for the respondent-Gram Panchayat placed on record today, the details of the other khatedari (jamabandis) lands of each of the plaintiff and also of the other



lands of which the plaintiffs are in possession qua which they have even applied for regularization.

12. So far as the land in question is concerned, counsel submits that only commercial activities are being undertaken on the said land. To substantiate his submissions, counsel has placed on record the photographs of the site in question which were a part of record of the earlier writ petition as filed by the present appellants.

13. Counsel further submits that prior to the suits in question, the plaintiffs had already availed remedy of Writ twice and even D.B. Special Appeal before this Court and after having lost before all the Courts, the present suits in question have been filed.

14. Counsel submits that after the specific directions been passed by this Court in S.B. Civil Writ Petition No.9685/2023, when the Gram Panchayat started the process of removal of encroachments from the land in question, obstructions were created by the plaintiffs and hence, the Gram Panchayat was forced to prefer a writ petition before this Court (S.B. Civil Writ Petition No.9338/2024) wherein too, vide order dated 21.01.2025, the Court directed the State administration to provide police assistance to the Gram Panchayat for removal of the encroachments in question. It is only after the order dated 21.01.2025 been passed that the appellants have pursued the present appeals which were although filed in the month of May 2024, were being got adjourned only.

15. Counsel therefore submits that in view of the above facts, the plaintiffs are not entitled to any relief and the orders impugned do not deserve any interference.



16. Heard learned counsel for the parties and perused the material available on record as well as the documents and photographs as placed on record today by both the counsels.

17. After thoroughly going through the complete material, the first conclusion which this Court draws is that all the submissions as made by learned counsel for the appellants before this Court are totally incorrect, false and misconceived on the face of it.

18. The first argument raised by the counsel to the effect that the applications for regularization were filed and placed on record by the plaintiffs before the learned Trial Court but the learned Trial Court recorded an erroneous finding to the contrary, is on the face of it, a total incorrect and fallacious argument.

19. The second argument that the plaintiffs do not have any other residential premise available in the same village is also totally misconceived.

20. The third argument that the plaintiffs have their dwelling houses constructed on the land in question and are residing there with their families is not only false but also deceitful.

21. The last argument raised that the Gram Panchayat is adopting a policy of 'pick and choose' against the present appellants-plaintiffs and is acting malafidely, also turns out to be a total incorrect submission.

22. The documents as placed on record by learned counsel for the respondent today clearly reveal that all the three appellants-plaintiffs have not only the other *khatedari* lands but also the other lands of which they are in possession in the same village.

23. The photographs as placed on record today clearly reflect that only commercial activities are being conducted on the lands



in question. The photographs of the residential houses of the plaintiffs on the other alternate lands is also evident. Meaning thereby, the site report dated 18.04.2023 as relied upon by the learned Trial Court depicts the clear position on the site.

Further, the fact of only commercial activities been conducted by the plaintiffs is evident even from the electricity bills as placed on record by the appellants themselves in the present appeals, to substantiate their ground of long possession. The electricity bills of Teja Ram clearly pertain to NDS (Non-Domestic Service) category. So far as the electricity bills of Fakrudeen are concerned, they although pertain to the domestic category but then are not of the disputed land in question but pertain to his residential house i.e. the other land where he is residing with his family. Same is the case of Hussain.

24. Further, as is evident from the survey report dated 21.06.2024 (placed on record by learned counsel for the respondents with his compilation), an inquiry on the objection of 'pick and choose' as raised by the plaintiffs, was very well conducted by the Public Land Protection Cell (PLPC). Vide the said report, it was specifically observed that the Gram Panchayat had issued notices to all the encroachees on the land in question and the said notices were even a part of the report before the PLPC. It was further observed that the Gram Panchayat intended and was bound to remove all the encroachments on the land in question.

25. In view of the above crystal clear facts, this Court does not find any ground to interfere with the order impugned as the findings as recorded by the learned Trial Court are totally in



consonance with law as well as the material available on record.

The present appeals are hence, **dismissed**.

26. However, before parting, this Court is constrained to observe that total incorrect, misconceived and fallacious arguments have been raised by counsel for the appellants before this Court. On 28.01.2025, the present appeals were listed at Sr. Nos.81 to 83 and the same could not reach on that date. However, counsel for the appellants made an urgent mentioning with a submission that if the matters are not taken up for hearing, the dwelling houses of the appellants would be demolished by the Gram Panchayat and they would be rendered homeless. On the said submission been made by counsel for the appellants, the Court directed the matters to be listed on 04.02.2025. However, a perusal of the record reveals that the present appeals were filed way back in the month of May 2024 but were got adjourned only, whenever the same were listed before the Court. Even an adjournment slip was circulated on behalf of counsel for the appellants. Meaning thereby, the urgency as mentioned on 28.01.2025 was also misleading.

27. On 04.02.2025, as observed hereinabove, counsel for the appellants raised submissions to the effect that the learned Trial Court ignored all the material which was available on record and passed an order total contrary to the documents as placed on record by the plaintiffs. On that date, when the Court raised a specific query to the counsel as to whether any application for regularization was filed by the plaintiffs and was placed on record before the learned Trial Court, the counsel very emphatically made the specific statement, "*I state that on oath sir.*". In view of the



said emphatic statement made by the counsel, the Court directed him to place on record the said applications and directed the matters to be posted on 06.02.2025 i.e. today.

28. In view of all the above observations and findings as recorded by this Court hereinabove, it is crystal clear that the Court was clearly misled by counsel for the appellants. All the submissions and arguments as raised by the counsel were/are totally incorrect and misleading.

29. In the present scenario, when the Courts are overloaded and overburdened with the number of listed cases where the daily cause list comprises of more than 300 matters per day and many a times, reaching to 600 matters per day, the Courts have no other option than to rely upon the submissions made by the counsels. In such a scenario, the Courts even pass orders relying upon the submissions as made by the counsels. It is the basic obligation of the litigant and his lawyer not to deceive or mislead the Court. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal argument and other submissions or communications with the Court. The duty not to intentionally mislead or deceive is only the bare minimum required of the advocate and solicitor. As an officer of the Court, he is expected to advance the public interest in the fair administration of justice even if this could jeopardise his client's interests. Hence, he is not only required to inform the Court of all relevant decisions and legislative provisions of which he is aware but also bound not to make any statements which are inaccurate, untrue and misleading.



30. As held by the Hon'ble Apex Court in the case of **D.P. Chadha vs. Triyugi Narain Mishra & Ors.; (2001) 2 SCC 221**, professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practising deception or fraud on the court. Therein, the Court held as under:

"The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

.....

24. *It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In adversarial system it will be more appropriate to say while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of chariot. As a responsible officer of the court, as they are called - and rightly, the counsel have an over all obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but over-zealousness and misguided enthusiasm have no place in the personality of a professional. Yet a counsel, in his zeal to earn success for a client, need not step over the well-defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to*



do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms."

31. This Court also gets support of its view by observation made by the Hon'ble Apex Court in the case of **Virender Singh & Ors. vs. State (Govt. of NCT of Delhi) Writ Petition(s) (Criminal) No(s). 296/2024** (decided on 10.09.2024) wherein the Court observed that, "it is not possible for Judges to go through each and every page of each and every case listed before the Court. Our system works on faith. We trust the members of the Bar when we hear cases. But, when we come across cases like this, our faith is shaken."

32. This Court is pained to observe that counsel for the appellants did not fairly state the facts before the Court but presented the same in such a way to mislead the Court as to the true facts and thereby, abused the process of law. The learned counsel not only made false and incorrect submissions but also withheld the true information which had a bearing in the matter. The counsel totally withheld the fact of the order dated 21.01.2025 passed in S.B. Writ Petition No.9338/2024 whereby a Co-ordinate Bench of this Court had already directed the District Collector and Superintendent of Police, Nagaur to ensure the requisite police force and other help to the Gram Panchayat to remove the encroachments. Therein, the Court further observed that in case the encroachers resist the Encroachment Removal Drive, the Gram Panchayat shall note their names and move an application in the present writ petition as to enable the Court to initiate proceedings for contempt against them.



33. Interestingly, the present appeals had been filed way back in the month of May 2024 and an urgency in the same has been pleaded only after the order dated 21.01.2025 having been passed.

34. Further, after the photographs been placed on record by learned counsel for the respondent qua the residential houses of the plaintiffs constructed on the other lands, the Court posed a specific question to the counsel for the appellants as to whether the said photographs did not pertain to the residential houses of the appellants, the counsel made a specific statement before this Court, "*I state that on oath sir.*". The said fact becomes more relevant when it is the same counsel who had preferred an application under Order 1 Rule 10, CPC in the Writ Petition No.9338/2024 wherein the order dated 21.01.2025 was passed.

35. This Court is of the clear view that had the facts not been brought to the notice of this Court by the counsel appearing for the Gram Panchayat, definitely the appellants would have had a leverage by getting away with concealment and non-disclosure of the material facts. The distorted facts as stated before this Court not only prove to be an attempt to mislead the Court but also an attempt to waste precious time of the Court.

36. In view of the above observations, this Court finds it essential to saddle counsel for the appellants with a cost for an attempt to get a priority in getting the matters listed out of turn on account of the alleged grave urgency and further to mislead the Court by total incorrect, false and misconceived submissions. The appeals are therefore, dismissed at a cost of Rs.50,000/- to



be deposited by counsel Mr. C.S. Kotwani with the Litigants' Welfare Fund within a period of fifteen days from now.

37. Stay petitions and pending applications, if any, stand **disposed of.**

(REKHA BORANA),J

211-213/KashishS/-

