
Satya Narain Vs Kundan Lal

Civil Second Appeal No. 458 of 1996

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: May 1, 1998

Acts Referred:

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 " Section 13

Citation: AIR 1998 Raj 338 : (1998) 3 WLC 527

Hon'ble Judges: Arun Madan, J

Bench: Single Bench

Advocate: B.B. Mathur, for the Appellant; S.R. Surana and Rajeev Surana, for the Respondent

Final Decision: Dismissed

Judgement

Arun Madan, J.

This civil second appeal has been preferred by the defendant appellant against the judgment and decree dated 20-8-1996

passed by Additional District Judge, Beawar in Civil Miscellaneous Appeal No. 7/1994 whereby he had reversed the findings recorded by the

Munsiff-cum-Judicial Magistrate, Beawar in Civil Suit No. 50/1982 by dismissing the plaintiff's suit on 23-2-1994 on the ground of personal bona

fide necessity.

2. The defendant appellant was a tenant in the suit premises situated at Ramleela Nohra Marg, Lalan Gali, Diggi Mohalla, Beawar, bearing

Municipal No. 6/335 (old) Block No. 1 new Municipal No. 5 which was earlier in the joint ownership of Gaddi Sriram alias Ghan Shyam Dass

Agrawal and Ramlal son of Ghadisiram, resident of Jaipur and the said property was constructed in five blocks, one out of which is in the

ownership of the present respondent who is the owner/landlord of the suit premises which is under the tenancy of the defendant-appellant. The suit

property was purchased by a registered sale deed dated 21-1-1979 by the respondent and consequent upon its purchase attornment notice was

also duly given and served on the defendant appellant as the lawful tenant of the respondent in the suit premises. Admittedly the suit property is

more than 90-95 years old and which fact has also been admitted by the defendant as DW 1.

3. The facts giving rise to the filing of this second appeal briefly stated are that a suit for eviction was filed against the defendant-appellant on the

ground of default in payment of rent and also on the ground of personal bona fide necessity of the respondent-landlord to occupy the premises in

question u/s 13(1)(a) and (h) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short "the Act")- The defendant-appellant

controverted the aforesaid grounds by contending in his written statement filed before the trial Court on the ground inter alia that the rent for the

period up to Mahadhi 12 Samvat 2035 had been paid to the previous landlord of the suit premises and the rent for the subsequent period was

tendered by him to the previous landlord several times and on account of his refusal to accept the same, it was sent by money order which too was

not accepted and, thereafter, it was deposited in the Court in accordance with Section 19-A of the Act and thus the defendant-appellant had not

committed any default in payment of rent and in fact he had already paid the rent up to Bhadwa Budi 12 Samvat 2040; and since the predecessor

of the plaintiff did not accept the* rent with some ulterior motive he remained in arrears on account of their conduct. With regard to the question of

bona fide requirement of the landlord to occupy the suit premises, this ground was refuted for the reasons that the plaintiff and his family members

had been purchasing lands and property at cheaper rates and thereafter selling them to prospective purchasers at high profits and it had become

their profession and trade. It was further stated that since the plaintiff/respondent as well as his family members did not live at Beawar and since the

plaintiff is serving as an Engineer in Public Works Department of the State Government for last several years and was last posted at Bikaner prior

to his posting at Jaipur and Ajmer etc. he was not in any bona fide need to occupy the suit premises. Thus for the last several years he has been

permanently residing outside Beawar with his family and hence there was no bona fide requirement of the suit premises since he had been residing

in official accommodations allotted to him at the station of his posting; besides lot of residential accommodation is available in the suit property and

is still lying vacant and available for occupation by the plaintiff and if the plaintiff desires he can live there with all comforts.

On the pleadings of the parties, the trial Court framed the following issues :--

1) Whether the defendant had committed default in payment of rent for the period 23-1-1979 till the date of filing of the suit i.e. 24-2-1982 and if

so to what effect ?

2) Whether the need of the plaintiff to occupy the suit premises was bona fide and genuine for his own occupation and that of his family and if so

whose comparative hardship will be greater ?

3) Whether the suit of the plaintiff was filed within the prescribed period of limitation of 5 years reckoned w.e.f. 2-1-1978. i.e. the date when the

appellant had gained entry in the suit premises on his induction as a tenant by the erstwhile owner as per Section 14(3) of the Act of 1950 ?

4) To what relief the plaintiff was entitled ?

4. The defendant-appellant contested the suit of the plaintiff-respondent by filing his written statement before the trial Court on the grounds inter

alia (a) all arrears of rent as claimed by the respondent-plaintiff for the period in dispute stood fully paid and that he had deposited the arrears of

rent with the trial Court in view of the refusal of the landlord to acknowledge the same in compliance with the provisions of Section 19A of the

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 and hence there was no default in payment of rent, (b) as regards the bona fide

requirement of the respondent-landlord to occupy the suit premises it was contended by the defendant-appellant that the said ground was not

available to the respondent since he was in Government service having its posting outside Beawar and hence having the Government

accommodation at station of his posting, there was no bona fide need to occupy the suit premises at Beawar (c) on question of comparative

hardship, the need of the appellant to occupy the same was greater than that of the respondent since the appellant was not having any other

alternative accommodation.

5. After hearing both the parties and on the basis of the evidence on the record, the trial Court vide its order and decree dated 23-2-1994

dismissed the plaintiff's suit against which he had preferred an appeal before the learned ADJ Beawar and the said Appellate Court vide its

impugned judgment and decree dated 30-8-1996 reversed the order/judgment and decree of the trial Court and decreed the respondent's suit

which has given rise to the filing of the present second appeal before this Court. Since the tenancy was oral, no rent note was executed but

however, the oral tenancy has been proved and relationship of landlord and tenant is not in dispute. The only ground which survives for

consideration of this Court is whether in view of the finding of the trial Court which had been recorded on the question of bona fide requirement of

the respondent-landlord and which was reversed by the First Appellate Court on the ground that the respondent was in fact in bona fide and

personal need to occupy the suit premises and also on the question of comparative hardship of the parties which is ancillary to the said ground of

eviction is to be examined and finally dealt with by this Court in the present appeal since the question of default in payment of rent has not been

pressed by the learned counsel for the respondent as the arrears of rent stands paid.

6. During the course of hearing, it has been contended by the learned counsel for the appellant that the appellant has already tendered the rent

including the arrears at the agreed rate of the landlord and hence this ground does not survive for consideration of this Court and the only question

which presently survives for consideration is the question of bona fide and personal necessity of the landlord to occupy the suit premises and also

the question of comparative hardship of the parties which is ancillary to the said ground of eviction.

7. I have examined the evidence led by the parties on the record and have also gone through the statement of the said witnesses recorded by the

trial Court. Prima facie I am of the view that the learned trial Court had not objectively considered the bona fide need of the landlord-owner to

occupy the suit premises and the impugned order of the trial Court is based on conjectures and surmises. It is the settled law that the bona fide

need of the owner to occupy the suit premises has to be carefully analysed and objectively considered by the trial Court, which, in my view has not

been done in the instant case. I am further of the opinion that in view of the obvious fallacy on the record of the trial Court the impugned order

passed by the said Court was rightly reversed in appeal by the judgment and decree of the First Appellate Court, dated 8-7-1996 giving rise to the

present Appeal before this Court which is now being finally decided by this .-order. I am further of the view that the trial Court had been swayed

by the factum of respondent being in Government service having his posting at Bikaner and having his occasional visits at Beawar and probably for

this reason the trial Court was of the view that since the posting of the landlord at Bikaner, he may not be in bona fide need to occupy the suit

premises. In this regard, the trial Court has failed to take note of the silent fact that the said landlord had submitted the building plan with the

Municipal Council at Beawar for its due sanction for the purposes of demolishing the old construction at site with view to re-construct the same by

raising a new construction and for which the building plan was duly sanctioned by the municipal council, Beawar on 27-1-1993 as per the

sanctioned plan on the record. This sanction was however, subject to revalidation as per the Municipal Rules if the construction is not raised within

the specified period and in that event the landlord has opportunity to approach the Municipal authorities again to get the sanctioned plan re-

validated or renewed as and when he proposes to raise construction thereon.

8. In order to satisfy myself with regard to the bona fide need of the respondent-owner to occupy the suit premises in question by raising a new

construction thereon, I have examined the statement of the plaintiff as PW 1 as well as other relevant evidence on the record led by the parties and

in my view UK, appellate Court has rightly reversed the finding of the trial Court as on the question of bona fide need of the respondent-landlord

to occupy the suit premises and the trial Court erroneously having not taken note of material aspects of the case had earlier dismissed the suit. In

his deposition before the trial Court the plaintiff has very specifically stated that in all probabilities he intends to occupy the suit premises as soon as

the same is vacated by the appellant and I find no reason to take contrary view of the matter particularly when it is the settled law that the landlord

is the best judge to decide his bona fide need which of course has to be objectively analysed and thereafter suit can be decreed on the ground of

personal bona fide need if there is cogent and sufficient evidence on the record led by the owner in the case which may justify and establish by

overwhelming evidence on the record his bona fide need to occupy the suit premises.

9. During the course of hearing learned counsel for the respondent -landlord has stated at the bar that the respondent has every intention to occupy

the suit premises and during the tenure of his service he even keeps on going and visiting Beawar frequently which is his home town in view of the

fact that his family comprising of his wife and children who are studying at Beawar and very close relatives are living at Beawar and he keeps on

visiting Beawar. In my view the bona fide necessity of the landlord cannot be doubted or diminished for the reason merely because he has his

posting away from his home town. There may be circumstances when it may not be possible for the landlords immediate family members i.e. his

wife and children not to leave their home town in view of the children's schooling and education which may not be disturbed as a result of transfer

of their father. In the statement of the plaintiff recorded by the trial Court, it has come on the record that as soon as the suit premises is vacated, he

will be permanently settling down at Beawar after his retirement from service. It has further come in evidence that the present structure of the suit

premises has become very weak and is in a dilapidated state and hence has to be demolished with a view to raise the new constructions which may

not be possible unless the present tenant i.e. the appellant vacates and it is only thereafter that the same will be demolished and new construction

shall be raised thereon in accordance with the Building Plan sanctioned by the Municipal Council, Beawar.

10. With regard to the comparative hardship it is very material before passing the decree of eviction, the trial Court has to examine the same before

decreeing the suit. In the instant case there is positive evidence on the record to the effect that the landlord has no other alternative accommodation

available to him except the suit premises as on the date of filing of the suit and it is separate and self acquired property and it does not form the part

of the acquired property of the joint Hindu Family nucleus of his brothers and relatives. The said property was purchased by a registered sale deed

on 21-1-1979 as referred to above and since then it is lawful ownership of the respondent-owner.

11. During the course of hearing, learned counsel for the appellant has vehemently contended at the bar that the learned trial Court had rightly

dismissed the suit of the plaintiff, since he was not in any bona fide need to occupy the suit premises mainly in view of the fact that he is posted at

Bikaner and he is not permanently available at Beawar along with his family to occupy the suit premises. He has further stated that the respondent-

landlord had other alternative accommodation available to him at Beawar though this fact has not been established by cogent evidence on the

record. In my view, there is obvious fallacy in this argument advanced by the learned counsel for the appellant for the reason that the appellant has

not been successfully able to challenge the finding of the appellate Court with regard to this aspect that the respondent landlord has in fact other

alternative accommodation to him as on the date of filing of the eviction suit in as much as the properties which have been referred to by the

appellant by way of alternative accommodation or joint family properties in ownership and occupation of the respondent's brother and relatives

and with regard to the property which is subject matter of the present suit, at least two eviction suits against the tenants are still pending and have

not yet been decreed and decided by the trial Court except the property which is subject matter of the present suit in which the decree of eviction

has been passed by the learned Additional District Judge, Beawar in Suit No. 458/1996. Hence, from the material on the record it cannot be

inferred that the respondent-landlord has any other alternative accommodation available to him to occupy as on the date of filing of the eviction suit

nor he has any other alternative accommodation available to him as of today and hence comparative hardship of the respondent/landlord to occupy

the suit premises is much greater than the appellant -tenant who is running the business as a milk vendor and for purposes of storing and selling the

milk in the aforesaid premises and with regard to his comparative hardship the learned counsel for the appellant has not been successfully able to

assail the findings of the appellate Court in this regard.

12. During the course of hearing, learned counsel for the appellant has contended at the bar that the respondent-landlord was not entitled to

succeed for the reason that in case he intended to demolish the old construction and thereafter reconstruct the property by raising a new

construction over the existing site, he should have filed a suit by taking proper grounds as available to him i.e. by invoking aid of the provisions of

Section 13(1)(k) of the Act which provides as under :--

Section 13(1)(k)--That the landlord requires the premises in order to carry out any building work :-- (i) at the instance of the (State Government)

in pursuance of an improvement scheme of development of scheme; or (ii) because the premises have become unsafe or unfit for human habitation;

or (iii) upon the requisition of a local authority".

13. With regard to this contention, I am of the view that it was not at all necessary for the respondent-landlord to have also taken the aid of

Section 13(i)(k) of the Act by pleading the said ground in the eviction suit for the reason of his having already taken the ground of his reasonable

bona fide need to occupy the suit premises in question as contemplated by the provisions of Section 13(i)(h) of the Act and the ingredients of the

said provision having not only been specifically pleaded by the plaintiff in the plaint but also the same has also been successfully proved in evidence

by way of evidence on the record and I am further of the view that it is not necessary that the landlord who has reasonable and bona fide need of

the suit premises should at the first instance also plead that he has to demolish the building and thereafter raise a fresh construction immediately

because the said situation cannot be conceived at the very initial stage as to whether the landlord would like to immediately demolish the existing

building and thereafter raise a new construction over the same. This depends on the several factors including financial status of the parties which is

paramount consideration to be kept in view in this regard. It is quite probable that the landlord may be intending to occupy and stay in the suit

premises and raise a new construction at the later stage because it is only after re-validation and after obtaining due sanction from the Municipal

Authorities and subject to the availability of the adequate funds at the disposal of the landlord, the question of reconstruction over the existing site

would arise.

14. Hence, in my view the second aspect of the matter, i.e. raising of the new construction after demolishing the old one has already been taken

care of by the respondent-landlord by urging the ground of bona fide need to occupy the suit premises as contemplated by Section 13(1)(h) of the

Act of 1950 and he has established on record by way of cogent and reliable evidence.

15. Learned counsel for the appellant in support of his contentions advanced at the bar placed reliance upon the following decisions :-

Riyaz Mohammad v. Rameshwar 1989 (I) RLW 95 , Rehman Jeo Wangnoo Vs. Ram Chand and Others, and 1997 DNJ 480.

16. In the matter of Riyaz Mohammad v. Rameshwar 1989 (1) RLW 95) (supra) the question which was raised in second appeal for

consideration of this Court was pertaining to partial eviction of the tenant u/s 14(2) of the Act though this plea had not been raised in the written

statement before the trial Court and no specific issue was accordingly framed nor any evidence was adduced. It was held that the appellant was

not precluded from raising this question in appeal, since it was incumbent upon the Court to consider the question in view of second paragraph of

Sub-section (2) of Section 14 of the Act. This Court accordingly remitted the case back to the trial Court with a direction to frame issue on this

aspect and thereafter decide the case in accordance with law.

17. In the matter of Rehman Jeo Wangnoo Vs. Ram Chand and Others, the only ground which was considered tenable in special leave to appeal

against the impugned judgment and order of the High Court of Jammu and Kashmir was confined to the failure of the Courts below in recording a

finding as contemplated under the relevant provisions of the Act with reference to the bona fide necessity of the landlord to occupy the suit

premises and in this context it was observed by the Apex Court that since the Courts below had not considered this question on merits, evidence

had not been taken on the score nor there has been any specific plea in that behalf and in view of the mandatory requirement of the statute, the trial

Court was directed to reconsider the matter on the question of partial eviction as contemplated therein should be ordered or the entire holding

should be directed to be evicted.

18. I have examined the ratio of the aforesaid decisions cited at the bar by the learned counsel for the appellant and I am of the view that their ratio

is neither attracted nor applicable to the instant case being distinguishable. I am of the view that first appellate Court, i.e. learned Additional District

Judge, Beawar has specifically recorded a finding to this effect that on the question of comparative hardship of the parties, the need of the landlord

respondent to occupy the suit premises, is much greater and since he had no other suitable and alternative residential accommodation at

Beawar where his family could be accommodated in his absence and on account of his transfer to Bikaner and I am firmly of the view that if there is

no other alternative accommodation available with the plaintiff where his family is actually stationed notwithstanding his posting outside to another

station on account of the exigencies of his official duties, the need of his family to occupy the suit premises would not stand diminished merely for

the cause since he is posted at different station and is entitled to official accommodation, his family should continue to suffer by hiring another

rented accommodation and for which landlord should be made to pay rent heavily through his nose and since otherwise his family should continue

to suffer for want of alternate accommodation not available to the landlord respondent just as it has happened in the instant case on account of

failure of the tenant-appellant to vacate the suit premises resulting in great inconvenience and hardship to the family of the respondent.

19. I am further of the view that the Court should take judicial notice of the fact which has been specifically pleaded in the pleadings more

particularly in the case of Government servants who are generally transferred within 3 years and the longer stay at one station of posting is normally

not permissible beyond the said period. In the instant case it has come on the record that the plaintiff-respondent has been frequently transferred

and furthermore he has got old ailing parents and on account of his family circumstances plaintiff's wife and daughter were forced to live at Beawar

to take care of the old ailing parents and also it has not been feasible to shift the daughter at Bikaner since her educational prospects would

otherwise have been greatly disturbed. The plaintiff has further got joint Hindu family and being a member of the joint undivided Hindu family he

has got only one room where his wife and daughter have been forced to live where they are cooking food, attending to the guests in the same

room, thereupon encroaching upon their privacy which cannot be maintained in such circumstances. Moreover, the plaintiff had purchased the suit

property keeping in view his residential requirements. It has further come in the evidence that since the suit property is very old property and is in

dilapidated condition it has got to be demolished with a view to raise a new construction for which the plaintiff had got the plan duly sanctioned

from the Municipal Council, Beawar and he had to carry out the new constructions in accordance with the sanctioned plan which was duly

sanctioned on 2-7-1993 and unless and until the old construction of entire block No. 1 is demolished, new construction cannot be raised. This fact

is also borne out from para 6 of the plaint which has not been specifically denied by the respondent in his written statement. The law is well settled

that every allegation made in the plaint if not specifically denied, shall be deemed to have been admitted. The defendant and his witnesses have not

specifically disputed this fact in their cross-examination and also as regards the joint Hindu family property which comprises besides the plaintiff, his

four brothers who are residing in the same building with their families apart from their aged parents who are alive and the H.U.F. property has not

been partitioned. In this way the plaintiff-respondent is left with only one room in the suit premises resulting in great inconvenience and hardship and

even on comparative hardship in my view, the plaintiff-respondent deserves to succeed.

20. Learned counsel for the respondent relied upon the following decisions :--

Prativa Devi Vs. T.V. Krishnan, Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by

Lrs. and Others, : Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, Raj Kumar v. Mehar Chand, 1990 (2) Raj

LR 731, Todar Mal v. Abbas Ali, 1994 (1) WLC 477 and Ram Sarup Gupta v. Bishnu Narain Inter College 1997 (2) UJ (SC) 1162 .

21. In the matter of Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, in an eviction suit filed by the landlords against the tenants on the ground of

demolition and reconstruction of the building u/s 14(1)(b) of the Tamil Nadu Rent Control Act, the tenant had challenged the bona fide requirement

of the landlords regarding demolition and reconstruction of the suit premises on the ground that the sole object of the same was to get rid of the

tenant. Since the building in question was old one and was situated in a very busy locality of the town, the respondents wanted to demolish the

entire building in order to reconstruct a new shopping complex for which necessary permission from the municipal authorities had already been

obtained and an undertaking had also been given by the respondents that they shall commence the work of demolition and reconstruction within

one month and the work shall be completed within the stipulated period of three months subsequently. The Rent Controller taking in view the

totality of the circumstances, directed the eviction of the tenant-appellants u/s 14(1)(b) of the Act. The said order was upheld by the High Court. In

appeal preferred before the apex Court against the impugned order of High Court the apex Court declined to interfere in the matter on the ground

that all the relevant factors have been taken into consideration by the Rent Controller and also by the High Court and hence there was no scope for

any interference by the apex Court. It was further observed that no Court can fix any time limit with regard to the age and condition of the building

which has to be taken into consideration along with other relevant factors and thereafter a conclusion can be arrived at by the Rent Controller.

22. In the matter of Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others, a suit for eviction was filed against the

tenant-appellant on the ground of personal and bona fide necessity of the respondent-landlords u/s 11(i)(h) of J. & K. Houses and Shops Rent

Control Act, 1966. Under the said provision landlord may seek eviction of his tenant provided residential houses or shop is reasonably required by

him either for purpose of building or rebuilding or for his own occupation or for the occupation of any person for whose benefit the house or shop

is held. The words ""reasonable requirements"" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish.

The distinction between desire and need should doubtless be kept in mind but not so as to make even a genuine need as nothing but a desire. In

other words the desire should reflect real bona fide need to be established on the basis of positive evidence on the record and should not be a

mere fanciful wish or desire. Applying the above well settled ratio it was held by the apex Court in an appeal preferred against the decision of J. &

K. High Court that the Act strikes a just balance between the two and in the said case since the plaintiff had successfully proved their requirement

of starting a hotel business which was both, genuine and reasonable and even imperative, because the scanty income of the plaintiffs was not

sufficient to maintain themselves or to afford them a decent or comfortable living. The fact that they wanted to occupy the property for running a

hotel would not take their case out of the ambit of personal necessity. The plaintiffs may choose to reside in the house or run a business in the

house or use it as a paying guest accommodation and derive income therefrom. In all these cases, though the plaintiffs may not physically reside in

the house, the house in law would nevertheless be deemed to be in their actual occupation.

23. In the matter of Bhanbaru v. Jeevni 1991 (1) RLW 105 it was held by this Court that the findings of facts recorded by the Courts below are

not open to challenge by way of second appeal. It was further held that either the sufficiency or adequacy of evidence to support the finding of fact

is not a ground for interference and erroneous finding of fact is not binding on this Court in second appeal.

24. During the course of hearing, much stress has been made by the appellant that respondent is a Government servant and posted at Bikaner but

he has not disputed this fact that the respondent has to visit Beawar frequently since his family is living at Beawar and hence the bona fide need and

requirement of the respondent to occupy the suit premises cannot be ruled out. It is pertinent to mention that in the connected S.B. Civil Regular

Second Appeal No. 340/96 in the matter of Mithulal v. Kundan Lal decided by this Court on 8-7-1996 against the judgment and decree passed

by learned Additional District Judge, Beawar in First Appeal No. 58/88 against the judgment and decree dated 24-5-1988 passed by Munsiff,

Beawar in Civil Suit No. 46/82, this Court had already directed the tenant-appellant in the said appeal to hand over the vacant and peaceful

possession of the suit premises to the respondent owner within a period of six months from the date of passing of the said order. Likewise, this

being a connected appeal I am not inclined to take contrary view of the matter.

25. During the course of hearing, learned counsel for the appellant has stated at the bar that his client should be given some reasonable time to

vacate the rented suit premises. Under the Act the decree of eviction becomes operative immediately on its passing and the tenant has to hand over

the vacant and peaceful possession of the rented suit premises within a period of two months. However, keeping in view of the fact that the

appellant had been in occupation as tenant for a long spell of time and the tenancy being very old, I deem it appropriate to direct the appellant to

hand over the vacant and peaceful possession of the rented suit premises to the landlord-respondent within a period of six months from the date of

submission of certified copy of this order subject to the appellant filing requisite undertaking in this Court within a period of four weeks from today

that he shall handover the vacant and peaceful possession of the suit premises to the landlord and shall also pay arrears of rent, if, any, upto date

regularly and the future monthly rent shall be paid by 15th of each succeeding month and in the event of default the landlord-respondent shall be at

liberty-to move this Court for obtaining necessary directions.

26. As a result of the above discussion, this second appeal is dismissed and the judgment and decree dated 30-8-1996 passed by Additional

District Judge, Beawar in Civil Misc. Appeal No. 7/94 reversing the judgment and decree of the trial Court passed in Civil Suit No. 50/82 is

confirmed. The parties are directed to bear their own costs.