

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

S.B. Civil Writ Petition No. 2876/2026

Chenaram S/o Shri Jetharam, Aged About 52 Years, Resident Of
Samdari, Tehsil Samdari, District Balotra, Rajasthan.

----Petitioner

Versus

1. Devaram S/o Shri Jetharam, Aged About 50 Years,
Resident Of Samdari, Tehsil Samdari, district Balotra,
Rajasthan.
2. Sub-Registration Officer, Tehsil Office, Samdari, District
Balotra, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Uttam Singh Rajpurohit

For Respondent(s) : Mr. Govind Suthar

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

25/02/2026

1. By way of the present writ petition, the petitioner–plaintiff has assailed the order dated 07.01.2026 (Annx.5) passed by the learned District Judge, Balotra in Civil Original Suit No. 43/2024 (Chenaram vs. Devaram & Anr.), whereby the application filed by the petitioner under Order VIII Rule 9 of C.P.C. seeking permission to place subsequent pleadings (rejoinder) on record, has been rejected.

2. Heard learned counsel for the parties.

3. Learned counsel for the petitioner submits that the petitioner instituted a civil suit for partition and permanent injunction in respect of the suit property, a residential pattasud land, originally allotted in the name of Late Jetharam, who had constructed shops and residential portions thereon. Upon his intestate demise on 13.10.2023 (his wife having predeceased him), the property is

stated to have devolved equally upon his two sons, the petitioner and respondent No.1, each holding a one-half share.

4. It is the petitioner's case that both parties continued in joint possession and jointly collected rental income. However, respondent No.1 subsequently attempted to interfere with the petitioner's possession and asserted exclusive ownership on the basis of an alleged forged Will purportedly executed by Late Jetharam.

5. It is further submitted that respondent No.1, in his written statement, pleaded that the property was the self-acquired property of Late Jetharam; that the petitioner had separated long ago and had been allotted separate property; and that a registered Will dated 08.04.2022 had been executed by Jetharam in favour of the defendant Devaram, pursuant to which Pattas Nos. 24, 25 and 26 dated 08.10.2023 were issued in his name.

6. During the pendency of the suit, the petitioner moved an application under Order VIII Rule 9 read with Section 151 CPC seeking leave to file a rejoinder to specifically deny the new pleas introduced in the written statement, namely, the execution of the registered Will, issuance of pattas in favour of the defendant and the claim of exclusive ownership. The application was opposed by the defendant. The learned trial court, by order dated 07.01.2026, rejected the application holding that the written statement did not introduce any new facts, that the proposed rejoinder was merely clarificatory in nature, that non-filing of a rejoinder does not amount to admission, and that the application appeared to have been filed to delay the proceedings.

7. Learned counsel for the petitioner contends that the Court possesses discretion to permit subsequent pleadings where the interests of justice so require. It is argued that the written statement introduced entirely new facts, particularly with respect to the alleged registered Will dated 08.04.2022, issuance of pattas in favour of the defendant and his claim of exclusive ownership and possession. These pleas, it is submitted, strike at the root of the title and materially change the nature of the controversy.

8. It is further contended that under Order VIII Rules 3 to 5 of C.P.C., material allegations must be specifically traversed and failure to do so may prejudice the plaintiff's case. Denial of an opportunity to file a rejoinder, therefore, amounts to violation of principles of natural justice and deprives the petitioner of the right to rebut the new defence. It is also submitted that written statement was filed only on 01.07.2025 and immediately thereafter, present application was filed by the petitioner on 28.10.2025. The issues have not been framed and the evidence of the parties is yet to commence, therefore, no prejudice would be caused to the defendant.

9. In support of his submissions, learned counsel for the petitioner has placed reliance on the judgment of the Madras High Court in ***Kaliammal & Another vs. R. Muthusamy Gounder & Another*** reported in ***2010 Supreme (Mad) 1550***.

10. *Per contra*, learned counsel for respondent No.1 submits that the suit property was the self-acquired property of Late Jetharam; that the petitioner had separated long ago and had been provided separate property; and that a valid registered Will dated

08.04.2022 was executed in favour of the defendant, on the basis of which pattas were lawfully issued in his name.

11. It is additionally contended that no new facts have been introduced in the written statement and that it merely elaborates the defence. The plea regarding the Will constitutes a natural defence in a partition suit and does not give rise to any fresh cause requiring a rejoinder. It is also urged that Order VIII Rule 9 of CPC confers discretion upon the Court and the plaintiff must demonstrate necessity for filing subsequent pleadings. According to the respondent, the application is vague and fails to specify the exact new pleadings sought to be rebutted.

12. I have thoughtfully considered the rival submissions advanced by learned counsel for the parties and have carefully perused the material available on record.

13. The principal question which arises for determination is whether, in the facts and circumstances of the present case, the learned trial Court was justified in declining permission to the petitioner to file a rejoinder to the written statement submitted by respondent No.1.

14. Order VIII Rule 9 of C.P.C. mandates that no pleading subsequent to the written statement shall be presented except with the leave of the Court and upon such terms as it deems fit. The provision undoubtedly confers wide discretion upon the Court; however, such discretion must be exercised judiciously, guided by sound legal principles and with a view to ensuring fair and effective adjudication of the real controversy between the parties.

15. In the case of **Smt. Mukut Raj Laxmi & Anr. vs. Dr. Jitendra Singh & Ors. (S.B. Civil Writ Petition No.1195/2015) decided on 26.11.2015**, a coordinate Bench of this Court observed as under :-

“A bare reading of the aforesaid provision makes it amply clear that a very wide discretion is conferred on the court in granting leave to a plaintiff for filing subsequent pleadings. Well it is true that in the guise of subsequent pleadings, a plaintiff cannot be allowed to setup a new case or incorporate certain inconsistent pleadings but then, plaintiff’s right to file replication to meet with some of the new facts averred in the written statement is clearly permissible under Order VIII Rule 9 CPC.

The ratio decidendi of the legal precedents on which learned counsel for the petitioner has placed heavy reliance cannot be disputed but then the principles enunciated therein are required to be applied in the backdrop of facts and circumstances of an individual case and there cannot be any straight-jacket formula. While considering the prayer of the plaintiff to file rejoinder, the nature of suit, the reliefs craved for and the pleas sought to be raised in the written statement are of great significance. If in the written statement, defendant has incorporated certain additional pleas including the plea of adverse possession, maintainability of the suit and limitation, such pleas in strict sense may not be a defence in the nature of set off or counter claim but are certainly in the nature of new facts, which if not controverted, can prejudice the cause of the plaintiff. It is in that background, the court is required to adopt a realistic and pragmatic approach rather than pedantic and idealistic approach while considering application under Order VIII Rule 9 CPC. A thorough evaluation of the impugned order on the touchstone of legal principles governing the province of subsequent pleadings makes it abundantly clear that learned court below has taken note of all the aspects while exercising its discretion. From the order impugned, it is clearly discernible that learned court below has scrutinized the requisite averments of the proposed rejoinder in the backdrop of written statement and thereafter has recorded its definite finding that pleas sought to be raised in the rejoinder are neither in nature of setting up a new case nor it contains inconsistent pleadings. Therefore, in the considered opinion of this Court, the discretion exercised by learned court below is judicious and it is rather difficult to concur with the submissions of learned counsel for the petitioners that it has transgressed its jurisdiction in passing the impugned order.”

Applying the aforesaid principles to the facts of the present case, this Court is of the view that the written statement sets up

specific pleas concerning the alleged execution of a registered Will dated 08.04.2022 and the consequent issuance of pattas in favour of the defendant, thereby laying claim to exclusive ownership. These averments constitute foundational facts which directly assail the petitioner's assertion of joint ownership based on intestate succession. If substantiated, such pleas would have the effect of non-suiting the petitioner.

16. Significantly, there is no specific objection from the respondent that, by way of the proposed rejoinder, the petitioner seeks to set up an altogether new or inconsistent case beyond the scope of the plaint. The proposed rejoinder is intended only to specifically traverse and rebut the new factual assertions introduced in the written statement. In such circumstances, the bar against raising a new case through subsequent pleadings is not attracted.

17. It transpires from the record that written statement was filed on 01.07.2025 and that the application seeking leave to file a rejoinder was submitted on 28.10.2025. The issues in the suit are yet to be framed and both parties will have adequate opportunity to lead evidence. At this stage, allowing the rejoinder would neither cause any significant delay nor prejudice the defendant, who will have full opportunity to contest the same during the course of trial.

18. In view of the foregoing discussion and in light of the law laid down in *Smt. Mukut Raj Laxmi* (supra), this Court is of the considered opinion that the learned trial Court failed to exercise its

discretion in a judicious manner while rejecting the application under Order VIII Rule 9 CPC.

19. Accordingly, the writ petition deserves to be and is hereby allowed. The impugned order dated 07.01.2026 (Annx.5) passed by the trial Court is quashed and set aside.

20. The petitioner is granted liberty to file rejoinder to the written statement. The trial court shall thereafter proceed to frame issues and decide the suit strictly in accordance with law, without being influenced by any observations made herein, which are confined solely to adjudication of the present writ petition.

21. Stay petition as well as all pending application(s), if any, shall also stand disposed of.

(MUKESH RAJPUROHIT),J