

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

S.B. Civil Revision Petition No. 66/2026

Mohammed Saleem S/o Late Shri Ibrahim Khan, Aged About 75
Years, Resident Of Sipahiyon Ka Bas, Near Shrimaliyon Ki
Bagechi, Siwana, Balotra Rajasthan

-----Petitioner

Versus

1. Ashraf Khan S/o Late Shri Gaffur Khan Ji Pathan, R/o. Mokalsar Road, Siwana, Balotra Raj.
2. Jaitoon Bano W/o Shri Jafar Khan, D/o Late Shri Gaffur Khan Ji R/o. Sipahiyon Ka Bas, sirohi.
3. Shamshad Bano W/o Shri Saleem Khan, D/o Late Shri Gaffur Khan Ji R/o. Upar Kota, Suraj Pole, Jalore.
4. Late Nazir Khan Alias Nasir Khan S/o Late Shri Gaffur Khan Ji, Since Deceased Represented By- Lrs
4/1 Gulab Bano W/o Late Shri Nasir Khan Pathan, R/o Mokalsar Road, Siwana, Balotra
4/2 Shameem Bano D/o Late Shri Nasir Khan Pathan, R/o Mokalsar Road, Siwana, Balotra
4/3 Asif S/o Late Shri Nasir Khan Pathan, R/o Mokalsar Road, Siwana, Balotra
4/4 Imran S/o Late Shri Nasir Khan Pathan, R/o Mokalsar Road, Siwana, Balotra
5. Late Lukman Khan S/o Late Shri Gaffur Khan Pathan, Since Deceased Represented By His Lrs-
5/1 Mumtaj Bano W/o Late Shri Lukman Khan Ji, R/o Sipahiyon Ka Bas, Sirohi
5/2 Parvej Khan S/o Late Shri Lukman Khan Ji, R/o Sipahiyon Ka Bas, Sirohi
5/3 Javed Khan S/o Late Shri Lukman Khan Ji, R/o Sipahiyon Ka Bas, Sirohi
6. Late Bhanwari Bano W/o Late Shri Fateh Mohd., Since Deceased Represented By Her L/rs-
6/1 Saleem Mohd. S/o Late Shri Fateh Mohd., R/o Upar Kota, Suraj Pole, Jalore
6/2 Sahjad Khan S/o Late Shri Fateh Mohd., R/o Upar Kota, Suraj Pole, Jalore

6/3 Ayub Khan S/o Late Shri Fateh Mohd., R/o Upar Kota,
Suraj Pole, Jalore

6/4 Abida Bano D/o Late Shri Fateh Mohd., R/o Upar
Kota, Suraj Pole, Jalore

6/5 Altaf Khan S/o Late Shri Fateh Mohd., R/o Upar Kota,
Suraj Pole, Jalore

6/6 Late Liyakat Khan S/o Late Shri Fateh Mohd., Since
Deceased Represented By His Lrs-

6/6/1 Firoza Bano W/o Late Shri Liyakat Khan, R/o Upar
Kota, Suraj Pole, Jalore

6/6/2 Naseem D/o Late Shri Liyakat Khan, R/o Upar Kota,
Suraj Pole, Jalore

6/6/3 Mohnish S/o Late Shri Liyakat Khan, R/o Upar Kota,
Suraj Pole, Jalore

6/6/4 Rubina D/o Late Shri Liyakat Khan, R/o Upar Kota,
Suraj Pole, Jalore

6/6/5 Ashif S/o Late Shri Liyakat Khan, R/o Upar Kota,
Suraj Pole, Jalore

7. Late Munnavar Khan S/o Late Shri Gaffur Khan, Since
Deceased Represented By His Lrs-

7/1 Shamshad Banoo W/o Late Shri Munnavar Khan, R/o
Mokalsar Road, Siwana, Balotra

7/2 Firoz Khan S/o Late Shri Munnavar Khan, R/o
Mokalsar Road, Siwana, Balotra

7/3 Afroz Khan S/o Late Shri Munnavar Khan, R/o
Mokalsar Road, Siwana, Balotra

7/4 Dilawar Khan S/o Late Shri Munnavar Khan, R/o
Mokalsar Road, Siwana, Balotra

8. Late Rafique Mohd. S/o Late Shri Ibrahim Khan, Since
Deceased Represented By His Lrs-

8/1 Mumtaz Bano W/o Late Shri Rafique Mohd., R/o
Sammo Ka Bas, Gandhi Chowk, Jalore

8/2 Mohd. Insaf S/o Late Shri Rafique Mohd., R/o Sammo
Ka Bas, Gandhi Chowk, Jalore

8/3 Mohd. Yunus S/o Late Shri Rafique Mohd., R/o
Sammo Ka Bas, Gandhi Chowk, Jalore

8/4 Mohd. Lliyas S/o Late Shri Rafique Mohd., R/o Sammo

Ka Bas, Gandhi Chowk, Jalore

8/5 Shamim W/o Shri Hanif Khan, D/o Late Shri Rafique
R/o Inside Lal Pole, Near Bageshwar Mandir, Jalore

9. Late Mishru Khan S/o Late Shri Nazir Khan, Since
Deceased Represented By His Lrs-

9/1 Bismillah, R/o Mokalsar Road, Siwana, Balotra

9/2 Bunde Khan S/o Late Shri Mishru Khan, R/o Mokalsar
Road, Siwana, Balotra

9/3 Ismail Khan S/o Late Shri Mishru Khan, R/o Mokalsar
Road, Siwana, Balotra

-----Respondents

Connected With

S.B. Civil Revision Petition No. 82/2026

1. Lrs Of Rafiq Mohd., Sammo Ka Bas Gandhi Chowk Jalore
Rajasthan

1/1 Mumtaz Bano, Aged About 80 Years, Sammo Ka Bas
Gandhi Chowk Jalore Rajasthan

1/2 Mohammad Insaf, Aged About 59 Years, Sammo Ka
Bas Gandhi Chowk Jalore Rajasthan

1/3 Mohammad Yunus, Aged About 53 Years, Sammo Ka
Bas Gandhi Chowk Jalore Rajasthan

1/4 Mohammad Ilyas, Aged About 49 Years, Sammo Ka
Bas Gandhi Chowk Jalore Rajasthan

1/5 Shamim W/o Hanif, Aged About 55 Years, D/o Late
Shri Rafiq Mohammad, R/o Inside Lal Pol Near Bageshwar
Temple Jalore Rajasthan

-----Petitioners

Versus

1. Ashraf Khan S/o Late Shri Gafoor Khan Pathan, R/o
Mokalsar Road Siwana Balotra Rajasthan

2. Jaitoon Bano, Sipahiyon Ka Bas Sirohi Rajasthan

3. Shamshad Bano, Upper Kota Suraj Pole Jalore Rajasthan

4. Lrs Of Late Nazir Khan, Mokalsar Road Siwana Balotra
Rajasthan

4/1 Gulab Bano W/o Late Shri Nazir Khan Pathan, R/o
Mokalsar Road, Siwana Balotra

- 4/2 Shamim Bano D/o Late Shri Nazir Khan Pathan, R/o Mokalsar Road, Siwana Balotra
- 4/3 Asif S/o Late Shri Nazir Khan Pathan, R/o Mokalsar Road, Siwana Balotra
- 4/4 Imran S/o Late Shri Nazir Khan Pathan, R/o Mokalsar Road, Siwana Balotra
5. Lrs Of Late Luqman Khan, Sipahiyon Ka Bas Sirohi Rajasthan
- 5/1 Mumtaz Khan W/o Late Shri Luqman Khan, R/o Sipahiyon Ka Bas, Sirohi
- 5/2 Pravez Khan S/o Late Shri Loqman Khan, R/o Sipahiyon Ka Bas, Sirohi
- 5/3 Javed Khan S/o Late Shri Luqman Khan, R/o Sipahiyon Ka Bas, Sirohi
6. Mohammad Salim, Sipahiyon Ka Bas Near Shrimaliyo Ki Bagechi Siwana Balotra Rajasthan
7. Lrs Of Late Mishshu Khan, Mokalsar Road Siwana Balotra Rajasthan
- 7/1 Bismillah wife of late Shri Mishru Khan
- 7/2 Boonde Khan S/o Late Shri Misru Khan, R/o Mokalsar Road Siwana Balotra
- 7/3 Ismail Khan S/o Misru Khan, R/o Mokalsar Road Siwana Balotra
8. Lrs Of Late Bhawari Bano, Upper Kota Suraj Pole Jalore Rajasthan
- 8/1 Salim Mohd. S/o Shri Fateh Mohd., R/o Upper Kota ,suraj Pol, Jalore.
- 8/2 Shahazad Khan S/o Fateh Mohd, R/o Upper Kota ,suraj Pol, Jalore.
- 8/3 Ayub Khan S/o Fateh Mohd., R/o Upper Kota ,suraj Pol, Jalore.
- 8/4 Abida Bano D/o Fateh Mohd., R/o Upper Kota ,suraj Pol, Jalore.
- 8/5 Altaf Khan S/o Fateh Mohd., R/o Upper Kota ,suraj Pol, Jalore.
- 8/6 Lrs Of Liaqat Khan S/o Fateh Mohd., R/o Upper Kota ,suraj Pol, Jalore.

8/6/1 Firoza Bano W/o Late Shri Liaqat Khan, R/o Upper Kota, Suraj Pol , Jalore

8/6/2 Naseem D/o Late Shri Fateh Mohd., R/o Upper Kota, Suraj Pol , Jalore

8/6/3 Mohnish S/o Late Shri Liaqat Khan, R/o Upper Kota, Suraj Pol , Jalore

8/6/4 Rubina D/o Late Shri Liaqat Khan, R/o Upper Kota, Suraj Pol , Jalore

8/6/5 Asif S/o Late Shri Liaqat Khan, R/o Upper Kota, Suraj Pol , Jalore

9. Lrs Of Late Munnawar Khan, Mokalsar Road Siwana Balotra Rajasthan

9/1 Shamshad Bano W/o Late Shri Munnawar Khan, R/o Mokalsar Road ,siwana Balotra.

9/2 Firoz Khan S/o Late Shri Munnawar Khan, R/o Mokalsar Road, Siwana Balotra

9/3 Afroz Khan S/o Late Munnawar Khan, R/o Mokalsar Road, Siwana Balotra

9/4 Dilawar Khan S/o Late Shri Munnawar Khan, R/o Mokalsar Road, Siwana Balotra

-----Respondents

For Petitioner(s)	:	Mr. Arvind Samdariya with Mr. J.R. Bhati Mr. Amit Mehta (in SBCR No. 82/2026)
-------------------	---	--

HON'BLE MS. JUSTICE REKHA BORANA

Order

27/03/2026

1. The present revision petitions have been filed aggrieved of order dated 11.12.2025 passed by Additional District Judge, Balotra (hereinafter referred to as 'the Trial Court') in Civil Original Suit No.04/2025 (CIS No.45/2025) whereby two applications

under Order 7 Rule 11, CPC as filed on behalf of defendant No.1 and defendant Nos.2/1 to 2/5 respectively, stood rejected.

2. Two grounds were raised by the defendants: *Firstly*, the suit in question was barred by *res judicata*; and *Secondly*, the suit was barred by limitation.

3. It was submitted that earlier a Suit (No.45/1993) between the same parties stood decreed in the year 2002 and in the execution proceedings qua the said decree, the possession of the land in question was handed over to the defendants. Once the judgment passed in Suit No.45/1993 attained finality, the present suit for the same property could not have been laid.

4. So far as the limitation is concerned, it was averred that the cause of action, if any, arose to the plaintiffs way back in the year 2002 when Suit No.45/1993 stood decided. The present suit was therefore clearly barred by limitation.

5. At this stage, counsel for the petitioners raised an additional ground to the effect that the suit in question was not maintainable in terms of Order 21 Rule 58 (2), CPC too.

6. Heard the Counsels. Perused the record.

7. It is the settled position of law that a plea of *res judicata* cannot be decided by the Court while deciding an application under Order 7 Rule 11, CPC. The same can be decided only after an issue been framed and the evidence been led by the parties. In ***Keshav Sood Vs. Kirti Pradeep Sood and Others; 2023 SCC OnLine SC 2459***, Hon'ble the Apex Court held as under:

"6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC.

The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits.”

8. In view of the above settled position of law, the learned Trial Court rightly rejected the said ground as raised by the defendants.

9. So far as the issue qua limitation is concerned, it has been averred in the plaint that the documents prepared in the execution proceedings by the *Sale Ameen* were forged and fraudulent and no possession was in fact handed over to the defendants in the said proceedings. The cause of action has been averred by the plaintiffs to have arisen in the year 2025 because of the said execution proceedings. The limitation also has been averred to have commenced since the said year. In that view, the learned Trial Court rightly observed that the issue qua limitation being a mixed question of fact and law, could not have been decided at that stage.

10. So far as the ground of non maintainability of the suit in terms of Order 21 Rule 58(2), CPC is concerned, evidently, the same was not raised before the learned Trial Court and hence, this Court cannot take the same into consideration in its limited scope of revisional jurisdiction.

11. Needless to observe that the defendants shall be at liberty to raise the said ground before the learned Trial Court, if they so desire.

12. No interference in order impugned is called for and the revision petitions are hence, **dismissed**.

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

(REKHA BORANA),J

14-15-Arvind/-