

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

S.B. Civil Second Appeal No. 92/2026

1. Smt. Vartika Singh W/o Himanshu, Aged About 47 Years,
R/o In Front Of Gulab Sagar Bacche, Jodhpur, Rajasthan.
2. Ravindra Singh Panwar S/o Mangilal Panwar, Aged About
42 Years, R/o Behind Hotel Paradise, Nai Sadak, Jodhpur,
Rajasthan.

----Appellants

Versus

1. Haji Mohammad Umar S/o Usman Khan, Owner Golden
Cinema, Nayi Sadak, Ghasmandi Road Jodhpur. R/o
Mohalla Laykan, Jodhpur, Rajasthan.
2. Iftar Begum W/o Mohammad Umar, R/o Mohalla Laykan,
Jodhpur, Raj.
3. State Of Rajasthan, Through District Collector, Jodhpur,
Raj.
4. Police Commissioner, Jodhpur Metro.
5. Commissioner Nagar Nigam, Jodhpur
6. S.h.o., P.s. Sadar Bazar, Jodhpur, Raj.

----Respondents

For Appellant(s)	:	Mr. Swanand Jasmatiya Mr. Tejmal
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HON'BLE MS. JUSTICE REKHA BORANA

Order

27/03/2026

1. The present second appeal has been filed aggrieved of
judgment & decree dated 22.12.2025 passed by Additional District
Judge No.5, Jodhpur Metropolitan in Civil Appeal No.36/2023 (CIS
No.36/2023) whereby order & decree dated 19.07.2023 passed by
Civil Judge, Jodhpur Metropolitan in Civil Original Suit No.51/2019
(NCV No.391/2019), stood affirmed.

2. Vide order dated 19.07.2023, the learned Trial Court proceeded on to allow application under Order 7 Rule 11, CPC as filed on behalf of defendant Nos.1 & 2. As a consequence thereof, the suit for permanent and declaratory injunction as filed by the plaintiffs, stood dismissed.

3. Application under Order 7 Rule 11, CPC was filed on the ground that the suit in question was infact a suit in terms of Section 91, CPC but no leave of the Court was prayed for prior to the registration of the said suit. Further, no publication in terms of Order 1 Rule 8 & Section 91, CPC was also made by the plaintiffs before institution of the present suit.

4. Grounds of the suit being barred by *res judicata* and regarding the jurisdiction of the Court were also raised.

5. So far as the grounds of *res judicata* and jurisdiction are concerned, the learned Trial Court rejected the same but allowed the application on the ground that the suit was barred by law in terms of Section 91, CPC.

6. The Court, while relying upon the judgments of this Court at Jaipur Bench passed in **Anil Kumar Shrivastava vs. Mukesh Chand Saxena & Ors.; 2013 SCC Online Raj. 2329** and **Kanti & Ors. vs. U.I.T. Bikaner & Ors.; AIR 1998 (Raj.) 108**, held that the plaintiffs raised the plea of public nuisance and damage to public life and did not aver any independent right of their own. Therefore, the Exception as provided in Section 91(2), CPC would not apply and it is Section 91(1), CPC which would apply. Neither any application for leave as per the said provision was ever filed by the plaintiffs nor was the suit instituted at the request of Advocate General. Therefore, as held in **Anil Kumar Shrivastava**

(supra) and ***Kanti*** (supra), the suit could not have been instituted by the plaintiffs in their independent capacity for removal of the alleged public nuisance.

7. The learned First Appellate Court, while affirming the findings of the learned Trial Court on the above aspect, also observed that the suit for the reliefs as prayed for by the plaintiffs could not have been entertained, there being an alternative remedy available for the same in terms of Rajasthan Cinemas (Regulation) Act, 1952. Further, although it was averred that the license as issued to the defendants was liable to be cancelled but then, no relief for such cancellation was prayed for. The First Appellate Court therefore, held the suit to be frivolous and vexatious.

8. After hearing the counsels and perusing both the orders impugned, this Court is of the clear view that the findings as recorded by both the Trial Court and the First Appellate Court are in total consonance with law. No substantial question of law arises in the present appeal and the same is hence, **dismissed**.

9. Stay petition and pending applications, if any, stand **disposed of**.

(REKHA BORANA),J