

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

S.B. Civil Revision Petition No. 80/2025

Suresh Pal Singh Tanwar S/o Sh. Dharm Singh, Aged About 50 Years, R/o House No S-38, Ashiyana Amar Bagh, Pali Road, Jodhpur Presently Residing At Sector G, plot No. 229 Shashtri Nagar Jodhpur.

-----Petitioner

Versus

1. Lrs Of Smt. Bhanwari Devi, W/o Late Sh. Surjaram, R/o Village Jhalamand, Dist. Jodhpur.
- 1/1. Pannalal S/o Late Sh. Surjaram, R/o Village Jhalamand, Dist. Jodhpur.
- 1/2. Bhinyaram S/o Late Sh. Surjaram, R/o Village Jhalamand, Dist. Jodhpur.
- 1/3. Durgaram S/o Late Sh. Surjaram, R/o Village Jhalamand, Dist. Jodhpur.
- 1/4. Ramlal S/o Late Sh. Surjaram, R/o Village Jhalamand, Dist. Jodhpur.
- 1/5. Smt. Kamla W/o Late Sh. Goparam, R/o Village Jhalamand, Dist. Jodhpur.
- 1/6. Smt. Babu D/o Sh. Goparam, R/o Village Jhalamand, Dist. Jodhpur.
- 1/7. Ashoka S/o Late Sh. Goparam, Minor Through Natural Guardian Mother Smt. Kamla W/o Late Sh. Goparam, R/o Village Jhalamand, Dist. Jodhpur.
- 1/8. Nirma D/o Late Sh. Goparam, Minor Through Natural Guardian Mother Smt. Kamla W/o Late Sh. Goparam, R/o Village Jhalamand, Dist. Jodhpur.
- 1/9. Smt. Sugani Devi D/o Late Sh. Surjaram, W/o Durgaram, R/o Boyal, Tehsil Bilara, Dist. Jodhpur.
2. Lrs Of Mafatlal, S/o Ganeshlal, R/o Village Jhalamand, Dist. Jodhpur.
- 2/1. Smt. Sheela W/o Late Sh. Mafatlal, R/o Kaluji, Teja Ji Ki Chali (Ghee Wali Gali), Chamanpura, Ahmedabad (Gujarat)
- 2/2. Smt. Sonu D/o Late Sh. Mafatlal, R/o Kaluji, Teja Ji Ki Chali (Ghee Wali Gali), Chamanpura, Ahmedabad (Gujarat)
- 2/3. Smt. Shalu D/o Late Sh. Mafatlal, R/o Kaluji, Teja Ji Ki Chali (Ghee Wali Gali), Chamanpura, Ahmedabad (Gujarat)
- 2/4. Smt. Khushbu D/o Late Sh. Mafatlal, R/o Kaluji, Teja Ji Ki Chali (Ghee Wali Gali), Chamanpura, Ahmedabad (Gujarat)
3. Bhomaram S/o Sh. Bhanuram, R/o Manpura, Jhalamand, Jodhpur.

4. Rameshwarlal S/o Jetaram, R/o 4-Kha-08, Madhuban Housing Board, Basni, First Phase, Jodhpur, Presently R/o 36, Karni Nagar, Basni, First Phase, Jodhpur.

----Respondents

For Petitioner(s)	:	Ms. Akshiti Singhvi with Ms. Nishtha Mittal
For Respondent(s)	:	Mr. Bharat Boob

HON'BLE MS. JUSTICE REKHA BORANA

Order

27/03/2026

1. The present revision petition has been filed aggrieved of order dated 02.12.2024 passed by Additional District Judge No.3, Jodhpur Metropolitan (hereinafter referred to as the 'learned Trial Court') in Civil Original Case No.290/2024 whereby application under Order 7 Rule 11, CPC as filed on behalf of defendant No.4, stood rejected.

2. Vide the application, the prayer to reject the plaint was made on two grounds:

(i) Without the plaintiffs having got a declaration in their favour by a competent Revenue Court, the present suit for cancellation of sale deeds could not have been maintained;

(ii) The suit as valued was erroneous and the court fee as paid was deficit.

3. Counsel for the petitioner submits that admittedly, it is defendant No.1 Mafatlal who was the recorded *khatedar* of the land in question. The plaintiffs were not the recorded *khatedars* but claimed their title by virtue of an alleged Will executed in their favour by Ganeshram, father of defendant No.1 Mafatlal. In that event, it was incumbent upon the plaintiffs to first get their rights

in the agricultural land declared in their favour by a Revenue Court. Unless the same was done, the suit for cancellation of sale deeds was not maintainable.

4. In support of her submissions, Counsel relied upon the judgment of Hon'ble Apex Court in ***Pyarelal Vs. Shubhendra Pilonia (Minor) through Natural Guardian (Father) Shri Pradeep Kumar Pilonia & Ors.; 2019 (3) SCC 692.***

5. So far as the court fee is concerned, Counsel submits that the learned Trial Court erroneously rejected the said ground on the premise that the suit is at a preliminary stage. She submits that in fact this is the stage when the issue qua court fee was required to be decided.

6. Per contra counsel for the respondents submits that the learned Trial Court rightly rejected the application as herein, it is a Will on the basis of which the plaintiffs were claiming their right. The validity of the said Will definitely could be decided by a Civil Court only. Without the issue regarding the Will been decided, no relief can be granted by the Revenue Court.

7. Counsel submits that so far as the mutation entries are concerned, the said action has already been laid a challenge to by the plaintiffs before a Revenue Court.

8. So far as the court fee is concerned, Counsel submits that the same is not deficit as the relief prayed for by the plaintiffs was only for declaration of the sale deeds to be void and not for their cancellation.

9. In support of his submissions, Counsel relied upon the judgment passed by a Co-ordinate Bench of this Court in ***Mst.***

Gyarsi Bai Vs. Board of Revenue, Ajmer & Ors.; S.B. Civil Writ Petition No.3474/1998 (decided on 31.10.2023).

10. Heard the Counsels. Perused the record.

11. It is an admitted fact that the plaintiffs have come up with the case that a Will was executed by Ganesh Ram in favour of Bhanwari Devi and by virtue of the said Will, they were the rightful owners of the land in question. It was averred by the plaintiffs that the names of legal representatives of Ganesh Ram had wrongly been entered into the revenue records and the same was already laid a challenge to by them. The subsequent sale by the legal representatives of Ganesh Ram was hence, illegal and therefore, the plaintiffs being the rightful owners, prayed for declaration of the sale deeds to be void.

12. The most natural conclusion that can be drawn from the above pleadings is that, a finding would be required to be recorded by the Court regarding the Will in question.

13. As is the settled position of law, if there is any dispute with respect to the title and more particularly, when the mutation entry is sought to be made on basis of the Will, the party who is claiming the title/right on basis of the Will has to approach the Civil Court and get his rights crystalised and only thereafter, on basis of the decision of Civil Court, necessary mutation entry can be made. ***{Jitendra Singh Vs. The State of Madhya Pradesh & Ors.; 2021 (3) RLW 2291 (SC)}***.

14. The ratio of Pyarelal (supra) would definitely not apply to the present matter, herein, the dispute being pertaining to a Will.

15. In view of the above settled position of law and in view of the admitted fact that the plaintiffs are claiming their ownership

on the basis of a Will, it is the Civil Court only which would have the jurisdiction to decide the issue. The order impugned, to that extent, being in consonance with law does not deserve any interference.

16. But so far as the observation made by the learned Trial Court to the effect that the issue regarding court fee could not have been decided at the preliminary stage is concerned, the same is in total contravention to the provision of Order 7 Rule 11, CPC. Order 7 Rule 11 specifically provides for the deficiency of court fee and non-payment of the same even after being directed, to be a ground for rejection of the plaint. Meaning thereby, the issue regarding court fee is required to be decided at this stage itself. Order impugned dated 02.12.2024 is set aside to the said extent.

17. The revision petition is hence, **disposed of** with a direction to the learned Trial Court to adjudicate and decide the ground pertaining to the deficiency of court fee, at this stage itself. The Court shall be at liberty to hear the arguments of all the concerned parties/counsels *de novo* on the said aspect and pass a fresh order qua the same.

18. The order, whatsoever, be passed within a period of four weeks from the date of receipt of the copy of the present order.

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

(REKHA BORANA),J