

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

S.B. Civil Second Appeal No. 114/2026

1. Jatanraj Mehta S/o Shri Premraj Mehta, Aged About 92 Years, Resident Of Merta City, Tehsil Merta, District Nagaur.
2. Pukhraj Mehta S/o Shri Ummaidmal Mehta, Aged About 85 Years, Resident Of Merta City, Tehsil Merta, District Nagaur.
3. Sajjanraj S/o Shri Amritraj Mehta, Aged About 66 Years, Resident Of Merta City, Tehsil Merta, District Nagaur.
4. Nemraj S/o Shri Jatanraj Mehta, Aged About 72 Years, Resident Of Merta City, Tehsil Merta, District Nagaur.

----Appellants

Versus

1. Shri Vardhman Sthanakwasi Jain Shrawak Sangh Merta City, Through Hastimal Doshi S/o Shrichand Doshi, Resident Of Merta City, Tehsil Merta, District Nagaur. (Alleged Unregistered Trust And Office Bearer).
2. Jabbar Chand Choradiya S/o Shri Bhanwarlal Chordiya, Resident Of Merta City, District Nagaur. (Alleged Office Bearer Shri Vardhman Sthanakwasi Jain Shrawak Sangh Merta City).
3. Rajkumar S/o Shri Sonajraj Mehta, Resident Of Merta City, Tehsil Merta, District Nagaur.

----Respondents

For Appellant(s) : Mr. Vishal Sharma

For Respondent(s) :

HON'BLE MR. JUSTICE FARJAND ALI

Order

08/05/2026

1. Heard learned counsel Shri Vishal Sharma and gone through the judgment passed by the learned trial Court as well as the Court of Appeal, and also perused the memo of appeal. It appears that substantial questions of law are involved in the present appeal. Even a bare perusal of the final verdict, particularly

paragraph No. 45 of the judgment passed by the learned trial Court, makes it abundantly clear that the decree was made subject to the outcome of the judgment in another case as would be passed by a higher Court. Subsequently, the suit was dismissed by the higher Court, for which a rider was incorporated in the judgment under challenge.

2. During the course of hearing of the appeal against the impugned judgment passed by the learned Civil Judge, an application was moved on behalf of the appellant-defendant seeking to take on record the judgment of other case passed by the higher Court, reference whereof had already been made in the impugned judgment. However, neither the application under Order 41 Rule 27 CPC was decided nor was the judgment of the higher Court taken into consideration while deciding the appeal.

3. This Court feels that substantial questions of law are certainly involved in the matter and, therefore, this Court deems it appropriate to interfere in the matter. The following substantial questions of law arise for consideration in the present appeal:-

(i) Whether the learned Court of Appeal erred in law in not deciding the application filed by the appellant under Order 41 Rule 27 CPC at the time of deciding the appeal, and whether the Court of Appeal was obligated to take on record the judgment of the higher Court, reference whereof had been made by the learned Civil Judge itself in paragraph No. 45 of its decree.

(ii) Whether a suit filed by an unregistered trust is maintainable in light of the embargo contained under Section 29 of the Rajasthan Public Trust Act.

- (iii) Whether a suit for permanent injunction alone is maintainable against the true owner of the property.
- (iv) Whether plaintiff can maintain a suit for simplicitor injunction without seeking the relief of declaration when he is neither the owner nor in possession of the suit property.
- (v) Whether a suit against the office-bearers of a registered trust is maintainable without impleading the registered trust and its trustees as party respondents/defendants.
- (vi) Whether a suit can be decreed contingent upon a future event.
- (vii) Whether a member of a society can maintain a suit against the office-bearers of a registered society under the provisions of the Rajasthan Societies Registration Act.
- (viii) Whether the Court of Appeal was required to formulate points for determination as envisaged under Order 41 Rule 31 CPC.

4. Admit.

5. Issue notice to respondent Nos. 1 and 2 only, returnable within a period of six weeks.

6. Call for the record.

7. In the meanwhile, and until further orders, the effect and operation of the impugned decree passed by the learned trial Court and affirmed by the Court of Appeal shall remain in abeyance.

(FARJAND ALI),J