

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

S.B. Civil Writ Petition No. 13880/2026

CNR: RJHC010633982026

URN: CW / 25287U / 2026

1. Lrs Of Kasturi Devi, W/o Late Shri Kishan Lal, Since Deceased, Through Her Legal Representatives -
2. Mewa Ram S/o Late Shri Kishan Lal, Aged About 64 Years, Resident Of Barmer.
3. Jagdish S/o Late Shri Kishan Lal, Aged About 55 Years, Resident Of Barmer.
4. Sohan Lal S/o Late Shri Kishan Lal, Since Deceased, Through His Legal Representatives -
5. Sushila D/o Late Shri Kishan Lal, W/o Banshidhar, Aged About 59 Years, Resident Of Barmer.
6. Chandra D/o Late Shri Kishan Lal, W/o Kanhaiya Lal, Aged About 50 Years, Resident Of Barmer.
7. Manju D/o Late Shri Kishan Lal, W/o Sunil, Aged About 44 Years, Resident Of Barmer.
8. Maya D/o Late Shri Kishan Lal, W/o Dharmendra, Aged About 42 Years, Resident Of Barmer.
9. Devi W/o Late Shri Sohan Lal, Aged About 40 Years, Resident Of Barmer.
10. Mohit S/o Late Shri Sohan Lal, Aged About 19 Years, Resident Of Barmer.
11. Damini D/o Late Shri Sohan Lal, Aged About 21 Years, Resident Of Barmer.

-----Petitioners

Versus

Masinga Ram S/o Shri Deda Ram, Resident Of Sardarpura,
Barmer, Tehsil And District Barmer.

-----Respondent

For Petitioner(s)	:	Mr. Sanjay Nahar
For Respondent(s)	:	-

HON'BLE MR. JUSTICE FARJAND ALI

08/07/2026

1. The present petition assails the order dated 30.05.2026 passed by the learned District Judge, Barmer in Civil Original Suit No.10/2020, whereby the evidence of the plaintiff was closed and the matter was directed to be listed for recording of the evidence of the defendants.

2. The petitioner is the plaintiff in a suit seeking partition and permanent injunction. During the pendency of the suit, the original plaintiff, Kasturi Devi, expired and her legal representatives have duly been substituted and brought on record.

3. The record reveals that on 19.02.2026, the affidavit of PW-1 Mewaram by way of examination-in-chief was filed and he was cross-examined on the very same day. The affidavits of the proposed witnesses, namely Mahesh Kumar, Parasmal and Babulal, were also filed. Thereafter, Parasmal was examined as PW-2 and duly cross-examined on 16.05.2026. Since the remaining witnesses could not be kept present, time was sought and the matter was adjourned to 25.05.2026, on which date the affidavit of Babulal by way of examination-in-chief was also placed on record.

3.1. On the next date fixed for recording his evidence, Babulal could not remain present before the learned Trial Court on account of illness. An application seeking adjournment, supported by the medical prescription issued by Dr. Dinesh Parmar and the relevant medical documents, was accordingly moved before the learned

Trial Court. The said application, however, came to be rejected on the premise that the witness was under an obligation to remain personally present before the Court, whereupon the plaintiff's evidence was ordered to be closed.

4. I have heard learned counsel for the petitioner, carefully considered the submissions advanced and meticulously perused the material available on record.

4.1. Upon an overall consideration of the attending facts and circumstances, this Court is of the considered opinion that the learned Trial Court adopted an unduly technical and inflexible approach in declining the prayer for a short accommodation despite the medical documents placed on record satisfactorily explaining the absence of the witness. The controversy pertains to adjudication of valuable civil and proprietary rights arising out of a suit for partition and permanent injunction. It is a well-settled principle that disputes involving substantive property rights ought, as far as practicable, to be decided on their merits after affording the parties a fair, effective and meaningful opportunity to adduce their evidence, unless the conduct of the defaulting party unmistakably manifests wilful negligence, deliberate disregard of the process of the Court or an intention to procrastinate the proceedings. No such circumstance is discernible from the record. Consequently, the ends of justice would be subserved by extending one final opportunity to the petitioner to conclude the plaintiff's evidence, albeit upon stringent terms.

5. Consequently, the impugned order dated 30.05.2026, to the extent it closes the plaintiff's evidence, deserves to be and is hereby kept in abeyance.

5.1. The aforesaid indulgence shall, however, remain conditional upon the petitioner depositing a sum of ₹5,000/- as costs before the learned Trial Court, payable to the respondent-defendant(s), so as to compensate them for the inconvenience occasioned by the adjournment.

5.2. Upon such deposit, the amount shall forthwith be offered to the respondent-defendant(s) or their learned counsel. In the event the respondent-defendant(s) accept the costs, the learned Trial Court shall fix a specific and convenient date for recording the cross-examination of Babulal. If the petitioner intends to examine any other witness, the affidavit(s) by way of examination-in-chief shall be filed well in advance and such witness(es) shall also remain present on the very same date for their cross-examination. The petitioner shall positively conclude the entire plaintiff's evidence on that date, and no further adjournment or indulgence shall be granted on any ground whatsoever.

5.3. However, in the event the respondent-defendant(s) decline to accept the costs imposed as a condition precedent for reopening the plaintiff's evidence, the learned Trial Court shall record such refusal, whereupon the further proceedings in Civil Original Suit No.10/2020 pending before the learned District Judge, Barmer shall remain stayed. The respondent-defendant(s) shall thereafter be at liberty to appear before this Court on the next date of listing

and register their protest against the present interim arrangement.

6. The stay application stands disposed of accordingly.

7. List the matter on 20.07.2026.

(FARJAND ALI),J