

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

S.B. Civil Writ Petition No. 15734/2021

1. Lrs Of Vaga Ram, Resident Of Udaipur Road, Pindwara, District Sirohi.  
1/1. Savita Devi W/o Vaga Ram, Aged About 50 Years, Resident Of Udaipur Road Pindwara District- Sirohi.  
1/2. Mukesh Kumar S/o Vaga Ram, Aged About 38 Years, Resident Of Udaipur Road Pindwara District- Sirohi.  
1/3. Ramila Devi W/o Dinesh Kumar D/o Vaga Ram, Aged About 35 Years, Resident Of Udaipur Road Pindwara District- Sirohi.  
1/4. Vikram Kumar S/o Vaga Ram, Aged About 30 Years, Resident Of Udaipur Road Pindwara District- Sirohi.  
1/5. Santosh Kumari D/o Vaga Ram, Aged About 21 Years, Resident Of Udaipur Road Pindwara District- Sirohi.
2. 2/1. Manju W/o Prakash Aged About 40 Years, Resident Of Udaipur Road, Pindwara, District Sirohi.  
2/2. Kishan Kumar S/o Prakash Kumar, Aged About 13 Years, Through Their Natural Guardian Smt. Manju W/o Prakash Kumar Residence Of Pindawara District- Sirohi.  
2/3. Bharatvaant Kumar S/o Prakash Kumar, Aged About 6 Years, Through Their Natural Guardian Smt. Manju W/o Prakash Kumar Residence Of Pindawara District- Sirohi.
3. Rama Ram S/o Bhuria, Aged About 57 Years, Resident Of Udaipur Road, Pindwara, District Sirohi.
4. Ramesh S/o Lada, Aged About 45 Years, Resident Of Udaipur Road, Pindwara, District Sirohi.
5. Bhanwar Lal S/o Lakma Ram, Aged About 50 Years, By Caste Ganchi, Resident Of Udaipur Road, Pindwara, District Sirohi.

-----Petitioners

Versus

1. 1/1. Hanja W/o Dharma Ram, Aged About 60 Years, Resident Of Pindawara District- Sirohi.  
1/2. Tulsi Ram S/o Dharma Ram, Aged About 45 Years, Resident Of Pindawara District- Sirohi.

- 1/3. Suresh Kumar S/o Dharma Ram, Aged About 40 Years, Resident Of Pindawara District- Sirohi.
- 1/4. Jyantilal S/o Dharma Ram, Aged About 35 Years, Resident Of Pindawara District- Sirohi.
- 1/5. Kishore Kumar S/o Dharma Ram, Aged About 30 Years, Resident Of Pindawara District- Sirohi.
- 1/6. Indra W/o Ramaram D/o Dharma Ram, Aged About 47 Years, Resident Of Khatik Vass Pindawara District Sirohi.
- 1/7. Sukali W/o Chunilal D/o Dharma Ram, Aged About 42 Years, Resident Of Jhadoli Tehsil Pindawara District Sirohi.
- 1/8. Kamla D/o Dharma Ram, Aged About 43 Years, Jhadoli Tehsil Pindawara District Sirohi.
- 1/9. Rekha W/o Bhera Ram D/o Dharma Ram, Aged About 32 Years, Residence Jhadoli Tehsil Pindawara District Sirohi.
2. Vimla W/o Lada, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
3. Pinky W/o Madan, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
4. Bhaga Ram S/o Madan, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
5. Suresh S/o Madan, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
6. Gairi W/o Bhuba Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
7. Naini D/o Bhuba Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
8. Manjula D/o Bhuba Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
9. Ganesh S/o Bhuba Ram, By Caste Ganchi, Resident Of

Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.

10. Shankar Lal S/o Bhuba Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
11. Vimla D/o Bhuba Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
12. Ramesh Kumar S/o Bhuba Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
13. Savita D/o Bhuria, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
14. Lahari Bai W/o Kesa Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
15. Pratap Ram S/o Kesa Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
16. Dinesh Kumar S/o Kesa Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
17. Kanhaiya Lal S/o Kesa Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
18. Lungi D/o Kesa Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
19. Geeta D/o Kesa Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
20. Babli D/o Kesa Ram, By Caste Ganchi, Resident Of Near Dwarkadheesh Temple, Ganchiwara, Pindwara, District Sirohi.
21. Smt. Naju W/o Soma Ram, By Caste Ganchi, Resident Of Dhidava, Udaipur Road, Pindwara, District Sirohi.
22. Geeta D/o Lada Ram, By Caste Ganchi, Resident Of Dhidava, Udaipur Road, Pindwara, District Sirohi.

23. Lungi W/o Madan, By Caste Ganchi, Resident Of Dhidava, Udaipur Road, Pindwara, District Sirohi.
24. Prakash Kumar S/o Lakma Ram, By Caste Ganchi, Resident Of Dhidava, Udaipur Road, Pindwara, District Sirohi.
25. Dinesh Kumar S/o Lakma Ram, By Caste Ganchi, Resident Of Dhidava, Udaipur Road, Pindwara, District Sirohi.
26. State Of Rajasthan, Through Tehsildar, Pindwara (Sirohi).
27. Additional Collector, Jodhpur.
28. Board Of Revenue, Rajasthan, Ajmer.

----Respondents

---

|                   |   |                         |
|-------------------|---|-------------------------|
| For Petitioner(s) | : | Mr. Pritam Solanki      |
| For Respondent(s) | : | Mr. Vishan Das Vaishnav |

---

**HON'BLE MR. JUSTICE SANJEET PUROHIT**

**Order**

**10/02/2026**

1. The present writ petition has been filed challenging the impugned order dated 15.02.2021 (Annex.5) passed by Additional Collector, Pindwara, District Sirohi (hereinafter referred to as the 'trial Court') by which the learned Additional Collector has rejected the application of the petitioner for recalling of witness/opening of evidence so also the order dated 22.09.2021 passed by learned Board of Revenue, Ajmer (hereinafter referred to as the 'Board of Revenue') by which the learned Board of Revenue has rejected the revision petition filed by the petitioners-defendants.

2. Stating brief facts of the case, counsel for the petitioner stated that in a suit filed by plaintiff-respondent No.2-Dharma Ram for declaration, partition and injunction, learned trial Court framed the issues. At the stage of defendant-witnesses, although witnesses-Rama Ram and Vaga Ram were present, however, the

learned trial Court vide its order dated 12.03.2018 has closed the evidence of the defendants.

2.1 In such circumstances, an application under Order XVIII Rule 17 CPC was filed with a prayer to recall the witnesses. Counsel for the petitioner stated that however, complete reading of the application shows that the same was filed praying for reopening of evidence and for providing an opportunity to defendants-petitioners for producing their witnesses.

2.2 Learned trial Court vide its order dated 15.02.2021 rejected the application of the petitioners on the ground that the provisions of Order XVIII Rule 17 CPC are not applicable in said circumstances.

2.3 Challenging said order dated 15.02.2021, a revision petition was filed and learned Board of Revenue vide its order dated 22.09.2021 rejected the revision petition so also prayer of the petitioners to re-open the evidence.

3. Challenging the said orders, the present writ petition has been filed.

4. Learned counsel for the petitioners argues that the learned Courts below have rejected the application of the petitioners in a cursory manner and if the evidence is not opened, the same would cause gross injustice to the petitioners.

4.1 Learned counsel also argues that although, provision of Order XVIII Rule 17 CPC was wrongly mentioned in the title of the application, however, bare reading of the said application clearly shows that the same was filed with a request for opening of the evidence.

4.2 Learned counsel states that mere non-mentioning of correct provisions cannot be a justified ground to reject application as well as revision petition of the petitioners. In support of the said contentions, learned counsel has relied upon the judgment dated 04.10.2019 passed by Hon'ble Apex Court in the case of **Pruthvirajsinh Nodhubha Jadeja(D) By LRS. Vs. Jayeshkumar Chhakaddas Shah & Ors.**

5. Per contra learned counsel for respondents states that the application in question has been filed under Order XVII Rule 17 CPC, which is relating only to recall a witness and said provision can be invoked only in relation to the witness, who has already adduced the evidence.

5.1 Learned counsel also states that sufficient opportunities were already granted to petitioners-defendants to adduce evidence and since petitioners were delaying the suit proceedings by taking unnecessary adjournments, learned trial Court has rightly closed evidence of petitioners vide order dated 12.03.2018.

5.2 Learned counsel argues that the orders passed by the learned Courts below are wholly justified and do not call for any interference of this Court.

6. Heard learned counsel for the parties and perused the material available on record.

7. Undisputed facts of the present case clearly shows that at the stage of the evidence of the defendants, the affidavits of the witnesses-Rama Ram and Vaga Ram have already been filed. It is also clearly mentioned in the application that at the relevant date, both the said witnesses were present before the learned Court

below, however, their attendance was not marked and later on, the evidence of the petitioners-defendants was closed.

7.1 Bare reading of the application (Annex.4) shows that the same has been titled as an application under Order XVIII Rule 17 CPC, however, contents of the said application clearly reveals that the petitioners have explained the circumstances in which the evidence was closed and also made a specific prayer that one opportunity may be granted to the petitioners to produce their evidence so that their witnesses be examined.

7.2 Learned trial Court vide impugned order dated 15.02.2021 rejected the application solely on the ground that the provisions under Order XVIII Rule 17 CPC are not applicable and once the evidence has been closed, the same cannot be reopened by the same Court.

7.3 This Court also finds that even the learned Revisional Court vide its order dated 22.09.2021 has dismissed the revision petition, solely on the ground of mentioning of wrong provision in the application.

7.4 The law is well settled that mere non-mentioning of a correct provision is not fatal to the application, if the power is available with the Court. The judgment relied upon by the petitioner passed in the case of **Pruthvirajsinh Nodhubha Jadeja** (supra) clearly supports the said proposition of law.

7.5 This Court finds that learned Courts below have committed an error apparent on the face of record, while rejecting the application of the petitioners merely on the ground of mentioning of wrong provision without considering the actual essence and

intent of the application, emerges from the contents of said application.

8. This Court is also of the opinion that when the affidavits of the witnesses were already available on record, one chance for their cross-examination ought to have been given to the petitioners by imposing appropriate cost.

8.1 This Court in **S.B. Civil Writ Petition No. 17672/2022; Mahipal Singh v Kundan Mal** opined that such request for reopening of evidence on appropriate cost should be allowed as absence of proper evidence might result in erroneous findings. The relevant paragraph is reproduced herein below:

*"5. It transpires that what weighed on the mind of the learned trial court was that granting of further opportunity to the petitioner would result in delay of the trial proceedings. **No doubt, granting of opportunity would have resulted in delay, but the same could have been compensated by imposing cost. While justice delayed is justice denied, at the same time, justice hurried is justice buried. Without proper evidence, being adduced before the learned trial court, the adjudication on the issues involved, may result in erroneous findings.**"*

9. As an upshot of above discussions, the present writ petition is allowed. The impugned order dated 15.02.2021 passed by Additional Collector, Pindwara, District Sirohi so also the order dated 22.09.2021 passed by learned Board of Revenue, Ajmer are, hereby, quashed and set aside.

10. The learned Court of Additional Collector, Pindwara is directed to permit the petitioners to produce the evidence of their witnesses while granting opportunity to adduce evidence at the cost of Rs.20,000/-.

11. Learned counsel for petitioners, at this stage stated that one of witnesses i.e.. Vaga Ram has expired on 08.07.2023 during pendency of the present writ petition. Therefore, petitioners are directed to file an affidavit of legal representatives of Shri Vaga Ram i.e. Shri Mukesh as a defence witness and the evidence of witnesses - Shri Rama Ram and Shri Mukesh be recorded, while granting an opportunity to the plaintiffs to cross-examine them.

12. Learned counsels for the parties informed that next date in the matter before the Court of Additional Collector, Pindwara is 18.02.2026. Counsel for the petitioners shall inform this order to the Court of Additional Collector, Pindwara, who shall fix next date after two weeks and on such date, petitioners shall file required affidavit and shall also deposit the cost as directed by this Court. On deposition of cost, the same be disbursed to respondents-plaintiffs. If the cost, as ordered by this Court, is not deposited on the said date, the evidence of the petitioners-defendants shall be deemed closed and the right to lead further evidence shall stand forfeited automatically.

13. On filing affidavit of the witnesses, the respondents-plaintiffs may cross-examine the said witnesses.

14. Stay application and all other pending application(s), if any, are also disposed of.

**(SANJEET PUROHIT),J**