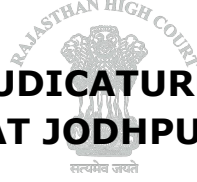


**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR**



S.B. Civil Writ Petition No. 19935/2025  
CNR: RJHC010946532025 | URN: CW / 35571U / 2025

Aziz Shah S/o Shri Akbar Shah, Aged About 75 Years, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh, Presently Residing At Sabri Colony, Ayad Teesri Gali, Udaipur (Raj.).

-----Petitioner

Versus

1. Iqbal Shah S/o Shri Mohammad Shah, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh (Raj.).
2. Gheesu Shah S/o Shri Mohammad Shah, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh (Raj.).
3. Saleem Shah S/o Shri Mohammad Shah, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. Presently Residing At Behind Community Hall, Nimbahera, District Chittorgarh (Raj.).
4. Shakur Shah S/o Shri Akbar Shah, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh (Raj.). (Since Deceased).
5. Gani Mohammad S/o Shri Akbar Shah, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. Presently Residing At Sabri Colony, Ayab Teesri Gali, Udaipur (Raj. ) (Since Deceased).
6. Munshi Mohammad S/o Shri Akbar Shah, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. Presently Residing At Sabri Colony, Ayad Teesri Gali, Udaipur (Raj.).
7. Jameel Mohammad S/o Shri Abdul Waheed Mohammad, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh (Raj.).
8. The Sub-Registrar, Bhadsoda, Tehsil Bhadesar, District Chittorgarh (Raj.).
9. Salim S/o Shri Ibrahim, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. Presently Residing At Behind Government Hospital, Bhinder, District Udaipur (Raj.).
10. Sharif S/o Shri Ibrahim, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. Presently Residing At

Behind Government Hospital, Bhinder, District Udaipur (Raj.).

11. Kalu S/o Shri Ibrahim, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. presently Residing At Behind Government Hospital, Bhinder, District Udaipur.
12. Mangi Bai D/o Shri Ibrahim W/o Shri Zakir Hussain, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. Presently Residing At Near Bus Stand, Darwaze Ke Andar, Kanod, District Udaipur (Raj.).
13. Lal Mohammad S/o Shri Ibrahim, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. presently Residing At Behind Government Hospital, Bhinder, District Udaipur (Raj.).
14. Raees Mohammad S/o Shri Ibrahim, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. presently Residing At Behind Government Hospital, Bhinder, District Udaipur (Raj.).
15. Jannat Bai S/o Shri Ibrahim, Resident Of Bhadsoda, Tehsil Bhadesar, District Chittorgarh. Presently Residing At Behind Government Hospital, Bhinder, District Udaipur (Raj.).

----Respondents

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|-------------------|---|--------------------------------------|
| For Petitioner(s) | : | Mr. Jitendra for<br>Mr. Sanjay Nahar |
| For Respondent(s) | : | -                                    |

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**HON'BLE MR. JUSTICE FARJAND ALI**

**Order**

**24/07/2026**

1. The instant writ petition has been preferred by the plaintiff-petitioner assailing the order dated 16.09.2025 passed by the learned Senior Civil Judge No. 1, Nimbahera, District Chittorgarh, in Civil Original Case No. 155/2018. By the impugned order, the learned trial Court has decided two applications simultaneously,

one preferred by the plaintiff-petitioner seeking impounding of the document dated 07.12.1979, and the other filed by the defendants-respondents raising an objection to the admissibility of the said document on the ground that it is unregistered and insufficiently stamped. The learned trial Court, while allowing both the applications, upheld the objection of the defendants-respondents and held that the document dated 07.12.1979, being unregistered and insufficiently stamped, is inadmissible in evidence. At the same time, the learned trial Court directed that the said document be impounded in accordance with law.

2. Bereft of unnecessary details, the facts requisite for adjudication of the present petition are that the petitioner instituted a civil suit seeking cancellation of the sale deed, declaration and permanent as well as mandatory injunction in respect of the disputed property, claiming ownership through succession and partition. During the course of the plaintiff's evidence, the respondents objected to the admissibility of the document dated 07.12.1979, contending that it was an unregistered and insufficiently stamped partition deed. The petitioner sought impounding of the said document by the Collector (Stamps), which request was allowed by the learned Trial Court. However, vide order dated 16.09.2025, while directing the document to be impounded, the learned Trial Court simultaneously upheld the respondent's objection and refused to admit the document in evidence on the ground that it was an unregistered

partition deed. Aggrieved thereby, the petitioner has preferred the present writ petition challenging the said order.

3. Heard learned counsel for the parties. Perused the order impugned, the material available on record and the statutory provisions governing the controversy.

4. The record reveals that the plaintiff produced a document dated 07.12.1979 before the learned Trial Court. A perusal of the impugned order reveals that the learned trial Court noticed that the examination of the plaintiff's witness had already been deferred on three occasions. The learned trial Court further observed that on each such occasion, an adjournment was sought on behalf of the plaintiff on the ground of non-availability of the impounded document. Taking note of the repeated adjournments, the learned trial Court directed the plaintiff to ensure the presence of P.W.-1 Aziz on the next date of hearing for recording of the plaintiff's evidence and made it clear that no further opportunity would be granted. It was also directed that the plaintiff had to deposit the deficient stamp duty in respect of the impounded document before the Collector (Stamps), Stamp Department, Circle Bhilwara, Rajasthan, at the earliest and thereafter posted the matter for the plaintiff's evidence on 23.09.2025.

5. This Court has already dealt with the similar issues involved in the present matter in the case of **Manoj Kumar & Ors. v. Nathmal Sharma & Ors.** [S.B. Civil Writ Petition No.

10748/2026] dated 21.07.2026. For ready reference, the relevant paragraphs of the judgment are reproduced herein below:-

"4. The principal question which falls for consideration is whether an unregistered and allegedly insufficiently stamped agreement to sell, forming the basis of a suit for specific performance, can be tendered in evidence without first complying with the mandate of the Registration Act, 1908 (hereinafter to be referred as "the Act of 1908") and the Act of 1998.

4.1 Before advertng, it is apposite to reproduce the relevant provision of the Act of 1908. For ready reference, Section 49 of the Act of 1908 is reproduced herein below:-

**"49. Effect of non-registration of documents required to be registered.—**No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall —

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

**[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.]**

4.2 Insofar as the objection regarding non-registration is concerned, Section 49 of the Act of 1908 provides that a document which is compulsorily registrable under Section 17 thereof cannot affect the immovable property comprised therein nor can it be received in evidence of any transaction affecting such property unless it has been registered. However, the proviso appended to Section 49 of the Act of 1908 carves out a well-recognised exception by permitting an unregistered document to be received in evidence as proof of a contract in a suit for specific performance or for

any collateral purpose which is not required by law to be effected through a registered instrument. Thus, in a suit founded upon an agreement to sell, the mere fact that the agreement is unregistered would not, by itself, render the document wholly inadmissible in evidence, provided that it is sought to be relied upon only for the limited purpose contemplated under the proviso to Section 49 of the Act of 1908.

5. As far as the question of Section 39 of the Act of 1998 is concerned, it unequivocally provides that no instrument chargeable with stamp duty under the Act shall be admitted in evidence, acted upon, registered or authenticated by any Court or authority competent to receive evidence unless such instrument is duly stamped. For the ease of reference, Section 39 of the Act of 1998 is reproduced herein below:-

**"39. Instruments not duly stamped inadmissible in evidence, etc. –**

No instrument chargeable with duty under this Act shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

*Provided that,-*

(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of, -

(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, and

[(ii) a penalty at the rate of two percent of the amount of the deficient duty per month or part thereof for the period during which the instrument remained insufficiently stamped or twenty five percent of the deficient stamp duty, whichever is higher, but such penalty shall not exceed to two times of the deficient stamp duty.]

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp; the contract of agreement shall be deemed to be duly stamped.

(c) nothing herein contained shall prevent the admission of any instrument as evidence in any

proceeding in a criminal court, other than a proceedings under chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

(d) nothing herein contained shall prevent the admission of any instrument in any court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 36 or any other provision of this Act.

(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral account of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid.

(f) nothing herein contained shall prevent the admission of any instrument in evidence in any court when stamp duty on such instrument has already been paid in advance in the form of a consolidated lump sum.

(g) nothing herein contained shall prevent the admission of any instrument in any court when such document has been executed by or on behalf of the Government or where it bears the Certificate of the Collector as provided by section 36 or any other provision of this Act.”

5.1 The legislative mandate embodied in the provision leaves no manner of doubt that an instrument which is not duly stamped cannot be received in evidence in its existing form. The proviso appended to Section 39, however, carves out an exception to the aforesaid embargo by providing that an instrument which is insufficiently stamped does not become altogether inadmissible. The defect is curable upon payment of the requisite stamp duty or the deficient portion thereof together with the penalty as contemplated under the statute. Thus, the legislative intent is not to exclude such document from consideration permanently, but to ensure compliance with the fiscal requirement prescribed under the Act before the document is admitted in evidence or acted upon by the Court. Viewed from the aforesaid perspective, if the agreement sought to be tendered in evidence is found to be insufficiently stamped, the learned trial Court shall ensure compliance with the mandate of Section 39 of the Act of 1998 before the document is received in evidence or exhibited, if otherwise admissible in law.

6. In view of the aforesaid legal position, this Court is of the considered opinion that though the agreement to sell cannot be excluded from consideration merely on the ground of non-registration in a suit for specific performance, its admissibility in evidence shall nevertheless remain subject to strict compliance with the provisions of Section 39 of the Act of 1998, if it is found to be insufficiently stamped.

5. This Court is of the view that the approach adopted by the learned trial Court is self-contradictory and does not withstand judicial scrutiny. While the learned trial Court has proceeded to direct that the document be impounded, it has simultaneously observed that the said document cannot be looked into or used in evidence. Such an approach is difficult to comprehend. Once the document is held to be wholly inadmissible for the purpose of evidence, the very object sought to be achieved by directing its impounding remains unexplained. The impugned order, therefore, suffers from an inherent inconsistency. The learned trial Court has failed to indicate as to what purpose would be served by impounding a document which, according to its own findings, cannot be received or relied upon in evidence. Such mutually destructive findings render the reasoning unsustainable in the eye of law and reflect a patent misdirection in the exercise of jurisdiction. The approach adopted by the learned trial Court is, therefore, not only legally untenable but also liable to be deprecated.

6. Accordingly, the instant writ petition is disposed of with certain directions:-

(i) The document shall be duly impounded only upon payment of the requisite deficit stamp duty and penalty, if any, as determined in accordance with law.

(ii) Needless to observe, notwithstanding its inadmissibility as evidence for want of proper stamping, the document may still be looked into for limited collateral purposes, such as establishing the nature of possession or other ancillary facts, to the extent permissible under law and for such limited ancillary purposes the document shall be allowed to be tendered in evidence.

7. Stay petition as well as all pending applications, if any, stands disposed of.

(FARJAND ALI),J