

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

S.B. Civil First Appeal No. 1168/2025

1. Hawa Devi W/o Narayan Singh Ji, Aged About 62 Years, Resident Of Barhgaon, Tehsil Raniwara, District Jalore.
2. Legal Representatives Of Narayan Singh, S/o Babu Singh Residents Of Barhgaon, Tehsil Ranwara, District Jalore.
- 2/1. Hanuman Singh S/o Narayan Singh, Aged About 37 Years, R/o Barhgaon Tehsil Ranwara District Jalore
- 2/2. Nita D/o Narayan Singh, Aged About 34 Years, R/o Barhgaon Tehsil Ranwara District Jalore
- 2/3. Indra Singh S/o Narayan Singh, Aged About 31 Years, R/o Barhgaon Tehsil Ranwara District Jalore

----Appellants

Versus

1. Shersingh S/o Babu Singh Ji, Resident Of Barhgaon, Tehsil Raniwara, District Jalore. Plaintiff
2. Israr Ahmed Sadiqqie S/o Mohammed Israyal Sadiqqie, Aged About 71 Years, Resident Of Plot No.65, Gate No.7, New Malwani Colony, Malad, West, Mumbai Maharastra Proforma Respondent

----Respondents

For Appellant(s)	:	Mr. Durgaram Kawadia
For Respondent(s)	:	Mr. Rahul Sharma

HON'BLE MS. JUSTICE REKHA BORANA

Order

23/02/2026

1. The present regular first appeal has been filed aggrieved of judgment & decree dated 14.10.2025 passed by Additional District Judge, Bhinmal, District Jalore in Civil Original Suit No.18/2014 (CIS No.730/2014) whereby the learned Trial Court proceeded on to decree the suit for cancellation of sale deed and for permanent injunction as filed by plaintiff-respondent No.1.
2. A bare perusal of the operative portion of the impugned judgment reflects that the Court has passed a preliminary decree

for partition of the suit property whereas admittedly, the suit in question was not for partition but was for cancellation of sale deed.

3. Further, while deciding the issue, the Court held the plaintiff entitled for 1/6th share in the suit property but proceeded on to cancel the sale deed qua 1/2 (half) of the share. Interestingly, the Court granted the decree for permanent injunction for 1/6th share.

4. It is further evident that the property in question is an agricultural land and the plaintiff, claiming himself to be a coparcener of the joint Hindu family property, prayed for cancellation of the sale deed qua his share. It is an admitted fact that the plaintiff had no declaration in his favour by any Revenue Court qua his share. In that event, the issue would also arise - Whether the suit itself was maintainable? The issue would also be - Whether a decree for partition qua an agricultural land could have been granted by a Civil Court?

5. Evidently, the decree for partition in a suit for cancellation of sale deed itself is in excess of jurisdiction.

6. In the above overall facts and the circumstances, this Court is of the clear opinion that admitting the present appeal and adjourning it for final hearing would serve no purpose as the patent illegality in the impugned judgment and decree is evident on the face of it. It would be in the interest of both the parties that the matter be remanded back to the learned Trial Court at this stage itself.

7. In view of the overall analysis, impugned judgment and decree dated 14.10.2025 passed by Additional District Judge, Bhinmal, District Jalore in Civil Original Suit No.18/2014 (CIS

No.730/2014) is hereby quashed and set aside. The matter is remanded back to the learned Trial Court for decision afresh.

8. It is an admitted fact that no issue regarding the maintainability of the suit before the Civil Court was framed in the matter. But as the same goes to the root of jurisdiction of the Court, it essentially deserves to be framed and be decided.

9. The learned Trial Court is therefore directed to frame an issue regarding the maintainability of the suit and while passing the judgment afresh, would be under an obligation to decide the said issue too.

10. It is made clear that the learned Trial Court shall not be under an obligation to record any fresh evidence, but would be at liberty to pass a judgment afresh, on basis of the material already available on record and after hearing the parties/Counsels afresh.

11. In view of the fact that this Court has directed for framing of an issue regarding maintainability/jurisdiction, the respondent-plaintiff shall be at liberty to move a fresh application for interim relief and the learned Trial Court shall be under an obligation to decide the same in accordance with law. Till the said application is moved and is decided by the learned Trial Court, the appellants shall be restrained from transferring, alienating or creating any third party rights on the property in question.

12. The appeal stands **disposed of**.

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

(REKHA BORANA),J