

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

S.B. Civil Writ Petition No. 23669/2025

1. Lrs Of Dwarkaprasad, S/o Shri Mishrilal Ji Jindal Through
 - 1/1. Shailendra Jindal S/o Late Sh. Swarka Prasad, R/o D/402, Jewel Of India Phase 1, J.I.n. Marg, Opp. Rajasthan Hospital, Jaipur, Raj.
 - 1/2. Smt. Premlata Jindal W/o Late Sh. Dwarka Prasad, R/o Jindal Bhawan, 260 Sojati Gate Link Road, Jalori Bari, Jodhpur.
 - 1/3. Smt. Manju Agarwal D/o Late Sh. Dwarka Prasad W/o Sarveshwar, R/o 23/24, Adarsh Nagar, Ajmer Road, Madanganj, Kishangarh, Raj.
 - 1/4. Smt. Anju Gupta D/o Late Sh. Dwarka Prasad W/o Rakesh Gupta, R/o E-502, Shree Sai Baba Apartment, Sector-9, Rohini East. New Delhi-85.
 - 1/5. Smt. Sanju Gupta D/o Late Sh. Dwarka Prasad W/o Rajesh Gupta, R/o Chaitanya Vihar, Face-2, 100 Ft Road, Vrindavan (Uttar Pradesh).
 - 1/6. Smt. Ranju Gupta D/o Late Sh. Dwarka Prasad W/o Jagdish Gupta, R/o G-2, Virasat Residency A-34, Swag Farm, Sundar Singh Bhandari Nagar, New Sanganer Road, Jaipur, Raj.
 - 1/7. Smt. Kamlesh Gupta D/o Late Sh. Dwarka Prasad W/o Satish Gupta, R/o 159, Janta Enclave, Add Dungari Face 2, Ludhiana, Punjab.
 - 1/8. Smt. Vimlesh Gupta D/o Late Sh. Dwarka Prasad W/o Suvnesh Gupta, R/o 42 Residency Garden, Stadium Road, Bareilly (Uttar Pradesh).
- Petitioners No. 1/2 To 1/8 Are Represented Through Power Of Attorney Holder Shailendra Jindal S/o Late Sh. Dwarka Prasad, Aged 63 Years, R/o D/402, Jewel Of India Phase 1, J.I.n. Marg, Opp. Rajasthan Hospital, Jaipur(Raj.), Who Is The Petitioner No. 1/1 Herein.

-----Petitioners

Versus

1. Lrs Of Mishrilal, S/o Late Sh. Ramnarayan Ji Jindal Through
- 1/1. Smt. Leela Devi W/o Sh. Omprakash Ji, (Nivarwala) Agrawal, R/o Sunaro Ki Ghati, Jodhpur.
- 1/2. Smt. Devi W/o Sh. Mohanlal Ji Agrawal Goyal, R/o Ram Minerals, Near Railway Station, Opposite Post Office, Barmer.
- 1/3. Smt. Krishna Modi @ Kanta W/o Dr. Brijmohan Ji Modi Agrawal, R/o Mohankunj, A-5, Shyamnagar, Jaipur.
2. Hariprasad S/o Late Sh. Mishrilal Ji Jindal, R/o Near Jalori Bari, Opposite Mahatma Gandhi Hospital, Jodhpur.
3. Trilokprasad S/o Late Sh. Mishrilal Ji Jindal, R/o Near

Jalori Bari, Opposite Mahatma Gandhi Hospital, Jodhpur.

----Respondents

For Petitioner(s)	:	Mr. O.P. Mehta
For Respondent(s)	:	Mr. R.K. Thanvi, Sr. Advocate assisted by Mr. Narendra Thanvi & Mr. Mahendra Thanvi

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

25/02/2026

1. The present writ petition under Article 227 of the Constitution of India has been filed by the petitioners-plaintiffs challenging the order dated 28.10.2025 (Annx.13) passed by the Additional District Judge No. 5, Jodhpur Metropolitan in Civil Original Suit No. 345/2012 titled as "LR's of Dwarka Prasad vs. *LR's of Mishrilal & Ors.*", to the extent vide which application under Order XVI Rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code' hereinafter) seeking to summon the witnesses to the will (Ex.123) was rejected.

2. The facts relevant for disposal of the present petition are that Late Sh. Dwarka Prasad Jindal, father of the present petitioners, instituted a civil suit seeking partition and permanent injunction against his father Late Shri Mishrilal Jindal, claiming that the properties described in paras 2 to 9 of the plaint were joint Hindu family properties, liable to be partitioned by metes and bounds. The defendant – Late Shri Mishrilal Jindal contested the suit by filing a written statement denying the ancestral nature of the properties and asserting that several of them were self-acquired properties. Subsequently, Hari Prasad Jindal and Trilok

Prasad Jindal (respondent Nos. 2 & 3 herein) were impleaded as defendants and they also filed written statements denying the existence of any HUF and asserting independent ownership over several properties. During the pendency of the suit, Late Sh. Mishrilal Jindal expired on 06.03.2008, and his legal representatives were substituted on record. Later, the plaintiffs sought amendment of the plaint under Order VI Rule 17 of the Code, which was allowed on 19.11.2018. The defendants filed their written statements and also challenged the amendment order before the High Court. During the pendency of proceedings, the original plaintiff Late Shri Dwarka Prasad Jindal expired on 03.12.2019, and the present petitioners were substituted as his legal representatives vide order dated 10.01.2020. Thereafter, on 16.09.2025, the petitioners filed an application under Order XVI Rule 1 CPC seeking summoning of the attesting witnesses of a Will (Exhibit-123) allegedly executed by Late Smt. Rukmani Devi, wife of Late Sh. Mishrilal Jindal, which had earlier been produced in photocopy by defendant Hari Prasad Jindal. However, the trial court dismissed the said application vide order dated 28.10.2025. Hence, this writ petition has been preferred by the petitioners.

3. Heard learned counsel for the parties.

4. Learned counsel for the petitioners contends that the trial court committed a factual error in treating the Will (Ex.123), executed by Late Smt. Rukmani Devi, as a Will of Late Smt. Lichmabai, who admittedly never executed any Will.

5. It is further submitted that the trial court erred in observing that no earlier Will of Late Shri Mishrilal existed on record,

whereas, the petitioners became aware of such earlier Will only from the recital contained in Ex.123. The application for summoning the attesting witnesses was, therefore, filed solely to prove execution of the Will of Late Smt. Rukmani Devi and the reference therein to the earlier Will, which according to the petitioners, has been suppressed by the respondents.

6. It is contended that the trial court wrongly observed that even if such earlier Will existed, it would be of no consequence in view of the subsequent Will (Ex.A6), thereby pre-judging an evidentiary issue without affording the petitioners an opportunity to lead foundational evidence. It is argued that a subsequent Will cannot be presumed to revoke an earlier Will unless such revocation is duly established in accordance with law.

7. It is also argued that the trial court erred in holding that Ex.123 has no relation to the disputed properties, despite the Will specifically referring to Smt. Rukmani Devi's partnership in Marudhar Traders and the movable assets arising therefrom. It is contended that the petitioners had only sought summoning of the attesting witnesses under Order XVI Rule 1 of the Code to prove the Will in accordance with Sections 68 and 69 of the Evidence Act, and denial of such opportunity violates the principles of natural justice.

8. It is further contended that the observation of the trial court regarding non-filing of witness affidavits is misconceived, as affidavits are required only at the stage of evidence under Order XVIII Rule 4 of the Code. According to the petitioners, refusal to summon the witnesses and closure of rebuttal evidence has

deprived them of a fair opportunity to establish their case, thereby causing serious prejudice and warranting interference under Article 227 of the Constitution of India.

9. In support of his contention, learned counsel for the petitioners has placed reliance upon the following decisions :-

- i. **Durga Parshad vs. Debi Charan and others reported in 1978 Supreme (SC) 281**
- ii. **H.V. Nirmala & Anr. vs. R. Sharmila & Anr. reported in 2018 Supreme (SC) 79**
- iii. **Abhay Kumar vs. Dhanraj reported in 2025 Supreme (Raj) 1238**
- iv. **Harjinder Singh vs. Shyam Sunder & Ors. reported in 2013 Supreme (Raj) 1079**
- v. **Champa Lal Jhanwar vs. Rajkaran & Ors. Reported 1999 Supreme (Raj) 1009**
- vi. **Paramjeet Kaur vs. Sarjeet Kaur reported in 2023 Supreme (Raj) 1674**
- vii. **Har Vilas vs. Kalyan Prasad reported in 1985 Supreme (Raj) 177**
- viii. **Representatives of Maheshwari Samaj through Ramniwas & Harvilas vs. Narendra Kumar & Anr. reported in 2015 Supreme (Raj) 1217**
- ix. **Sikhandar Saheb vs. Husena Saheb reported in 1995 Supreme (Kar) 544**
- x. **Manoj Kumar Sharma vs. Jagdish Thanwardas reported in 2000 Supreme (Raj) 510**
- xi. **M. Ram Kumar Murty vs. M. Adi Narayan Murty and Anr. reported in 2023 3 CurCC 69**

10. On the other hand, learned Senior counsel appearing for the respondents contends that the present suit is a partition suit concerning alleged joint Hindu family properties and that the Will (Ex.123), purportedly executed by Smt. Rukmani Devi, has no nexus with the suit properties.

11. It is argued that the original plaintiff had clearly pleaded that no written Will existed, and therefore the petitioners cannot now introduce a new issue regarding alleged Wills at the stage of final arguments.

12. It is further contended that Ex.123 is only a photocopy produced during proceedings and is not relied upon even by the defendants. The application is based merely on a recital referring to an alleged earlier Will of Late Mishrilal Jindal, which has neither been produced nor pleaded.

13. It is therefore urged that the trial court rightly exercised its discretion under Order XVI Rule 1 of the Code in refusing to summon the witnesses, and no interference is warranted under Article 227 of the Constitution of India.

14. In support of his contentions, learned Senior Counsel for the respondents has relied upon the decision of this Court in **Jasmel Singh vs. Sandeep Singh Gill** reported in **(2025) 2 CivCC 738**.

15. I have considered the submission of rival parties and perused the material available on record and the judgments cited.

16. The present suit is a partition suit instituted by Late Dwarka Prasad Jindal, seeking division of properties alleged to constitute joint Hindu family property. The principle issue in the suit pertains to the nature, ownership and title of the said properties. The petitioners have approached this Court primarily to summon the attesting witnesses of a document marked as Ex.123, alleged to be a Will executed by Late Smt. Rukmani Devi wife of Late Shri Mishrilal Jindal.

17. A careful examination of the plaint shows that the original plaintiff had specifically averred that no written Will was executed by the predecessors in respect of the suit properties. Ex.123, which is a photocopy produced during the proceedings, is claimed to be a Will of Smt. Rukmani Devi. The trial court observed that the authenticity or validity of any Will is not directly in issue in the present suit; further, the document does not appear to relate to the properties described in the plaint, nor is it relied upon by the defendants.

18. The petitioners' reliance on judgments in *Durga Parshad (supra)* and *H.V. Nirmala & Anr. (supra)*, which concern the summoning of witnesses to prove disputed wills or documents crucially connected to the matter in controversy, are distinguishable on facts, as here the Will is collateral to the main dispute regarding joint family properties. In such circumstances, summoning attesting witnesses would not materially assist in the adjudication of the suit.

19. The petitioners further contend that the Will refers to an earlier Will of Late Shri Mishrilal Jindal, which they claim to have discovered from the recital in Exhibit-123. However, no such earlier Will has been produced or pleaded in the suit, its contents remain unknown and no legal issue arises in relation to it.

20. The judgments relied by the petitioners in *Abhay Kumar (supra)* and *Champa Lal Jhanwar (supra)*, involve scenarios where the earlier documents were central to the controversy and their existence was undisputed, unlike the present case. In the opinion of this court, the trial court has thus, correctly concluded that

summoning witnesses for proving a speculative or unproduced Will would serve no useful purpose and would unnecessarily complicate the proceedings.

21. The power to summon witnesses under Order XVI Rule 1 of the Code vests with the trial court, to be exercised judiciously in light of the pleadings, the relevance of the document and the stage of proceedings. In the present case, the trial court considered these factors before exercising its discretion. There is no indication of arbitrariness, illegality or jurisdictional error in the impugned order that would warrant interference under Article 227 of the Constitution of India. In the opinion of this Court, the petitioners' contentions do not raise any bona-fide circumstances justifying such interference. The similar view has also been taken by a co-ordinate bench of this Court in S.B Civil Writ Petition no. 4853/2025, dated 05.03.2025.

22. As regards the contention that the Will of Late Smt. Rukmani Devi was mistakenly treated as that of Late Smt. Lichmabai, even if such misidentification occurred, the Will remains collateral to the main issue and does not affect the trial court's evaluation of the pleadings or the parties' rights in relation to the joint Hindu family properties.

23. In ***Shalini Shyam Shetty v. Rajendra Shankar Patil*** reported in **(2010) 8 SCC 329**, the Hon'ble Apex Court examined the scope of the High Court's power under Article 227 of the Constitution and laid down the following proposition:

"Article 227 can be invoked by the High Court suo motu as a custodian of justice. An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary

power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievances. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline. The object of superintendence under Article 227, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice re-mains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court."

24. In view of the foregoing discussion, this Court finds that the order dated 28.10.2025 passed by the trial court does not suffer from any illegality or perversity.

25. The writ petition is devoid of merit and is accordingly dismissed.

26. Stay petition as well as all pending application(s), if any, shall also stand disposed of.

27. It is clarified that the observations and findings recorded herein shall not constrain the trial court in delivering its final judgment.

(MUKESH RAJPUROHIT),J