

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 2792/2026

Pandit Shyobuxrai Arichwal Charitable Trust, Bagar Tehsil,
District Jhunjhunu Through Trustee Vishnudatta Sharma, Age 50
Years, Son Of Late Biharilal Sharma, Resident Of Ward No. 2,
Sheetla Mohalla, Bagar Tehsil, District Jhunjhunu (Raj.)

----Petitioner/Plaintiff

Versus

1. Sunil Kumar Son Of Late Shiv Bhagwan Sharma, Resident Of Ward No.04, Sheetla Mohalla Bagar, Tehsil And District Jhunjhunu (Raj) Pin No. 333023
2. Sanjay Kumar Son Of Late Shiv Bhagwan Sharma, R/o Ward No.04, Sheetla Mohalla Bagar, Tehsil And District Jhunjhunu (Raj) Pin No. 333023
3. Sudha Devi Daughter Of Late Shivbhagwan Sharma Wife Of Omprakash Joshi, Resident Of Near Bala Ward Temple, Bhairav Bahwani Chowk, ward No. 29, Laxmangarh, District Sikar, Rajasthan. Pin No.332311.
4. Smt. Laxmi Devi Wife Of Late Shiv Bhagwan Sharma, R/o B-2 Gautam Apartment, Gujan Road, Gidc Vapi, Near Gautam Kirana Store, Pardi Vapi, L.i. Valsad, Gujarat - 396195
5. Anil Kumar Son Of Late Shiv Bhagwan Sharma, Resident Of B-2 Gautam Apartment, Gujan Road, Gidc Vapi, Near Gautam Kirana Store, Pardi Vapi, L.i. Valsad, Gujarat - 396195
6. Shri Rajaram Sharma Son Of Late Shri Kanhaiyalal, R/o Brc Tower 4Th Floor, 18/3 Kumud Goshal Road, Kalachand High School, Kolkata, West Bengal-700057.
7. Smt. Krishna Devi Wife Of Late Shri Kirti Kumar Sharma, R/o 645 James Log Sarani West Barisha 24 Pargana, West Bengal-700063.
8. Prakash Son Of Late Kirti Kumar, Resident Of 645 James Log Sarani West Barisha 24 Pargana, West Bengal-700063.
9. Mohammad Idrish Khan Son Of Mohammad Nizamuddin, Resident Of Ward No. 28 Mohalla Batwalan, Jhunjhunu Tehsil And District Jhunjhunu, Rajasthan.

10. Deputy Registrar, Jhunjhunu Office, Jhunjhunu- 333001

----Respondents/Defendants

For Petitioner(s) : Mr. Yogendra Singh Rajawat
For Respondent(s) :

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment / Order

Date of hearing and conclusion of arguments	13.02.2026
Date on which the judgment was reserved	13.02.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	17.02.2026

1. The present civil writ petition has been filed challenging the order dated 09.12.2025, passed by the learned District Judge, Jhunjhunu, whereby upon objections being raised by the Office, the learned trial Court directed the plaintiff-petitioner to pay requisite Court fees on the valuation of sale deed, which has sought to be declared as 'null and void' to the extent of the rights of the plaintiff-petitioner by applying section 38 (1) of the Rajasthan Court Fees and suits valuation act 1961 (herein after referred to act of 1961).

2. Learned counsel for the petitioner submits that the petitioner has not filed a suit for cancellation of the sale deed, as he was not a party to the said instrument. He further submits that as the petitioner is neither an executant nor a party to the sale deed, he is not required to seek its cancellation. As per the prayer clause of the suit, the petitioner has only sought a declaration that the sale deed be declared 'null and void' qua his rights.

3. Learned counsel for the petitioner further submits that the learned trial Court has committed an error while directing the petitioner to pay Court Fees as payable in a suit for cancellation of an instrument under Section 38 of the act of 1961. In support of his submission, learned counsel has relied upon the judgment passed by the Hon'ble Apex Court in **Suhrid Singh @ Sardool Singh vs Randhir Singh & Ors**; 2010 (12) SCC 112, held as under:

"6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the

Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "co-parcenery" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds."

4. Further he relied on the judgment of a Co-ordinate Bench of this Court in the case of **Laxminarayan vs Ramswaroop** reported in (2017) 4 WLN 98, wherein the Court while distinguishing between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance involving agriculture land, observed that in suits for a declaratory decree, the court fee shall be calculated as per the provisions of Section 7(2)(a) of the Act of 1961. The Court while relying on the case of **Suhrid Singh @ Sardool Singh** (supra) held as under:

"8. According to the plaint filed by the petitioners, the disputed property is agricultural land and the petitioners are not the executant of the deed, which they want to be annulled, therefore, it is not necessary for them to seek cancellation of the deed and it is sufficient for them to seek a declaration that

the deed is invalid or non-est or illegal or that it is not binding on them. Section 7 of the Act provides for determination of market value of the property in dispute.

9. According to Clause (a) of Sub-section (2) of Section 7 of the Act, where rent in respect of such land has been settled, court fee shall be payable twenty-five times of the rent rate sanctioned during the last settlement. According to the plaint averments, the property in dispute is agricultural land and rent in respect of such land is Rs. 28.72/- and it appears that the plaintiff petitioners have assessed the market value of their share in the property by multiplying the amount of rent with twenty-five times, which is in conformity with the provisions of the Act. To us, learned trial Court has wrongly directed the plaintiff-petitioners to pay the ad-volerm court fees on the sale consideration recited in the sale deed, as provided under Section 38 of the Act."

5. Heard learned counsel for the petitioner and perused the material available on record.

6. Considering the material available on record and on reading of the plaint, this Court finds that the relief sought in the suit does not pertain to the cancellation of the sale deed. Moreover, the plaintiff-petitioner is not a party to the instrument in question. It is also evident from the prayer clause of the suit that the petitioner has confined the relief to seeking a declaration that the sale deed is "null and void" to the extent of its rights.

7. Having regard to the observations made in the cases of **Suhrid Singh @ Sardool Singh** (supra) **and Laxminarayan** (supra), this Court is of the firm opinion that in case where the

disputed property is agricultural land and the petitioner is not the executant of the deed, which he wants to declare as "null and void" qua his rights, the court fee shall be payable twenty-five times of the rent rate sanctioned during the last settlement, as provided under Section 7(2)(a) or 7(2)(b) of the Act of 1961. Therefore, the order dated 09.12.2025 passed by the learned trial Court directing the petitioner to pay court fees under Section 38 of the Act of 1961, cannot be sustained and is accordingly set aside.

8. The learned trial Court is directed to reconsider the matter and permit the plaintiff to pay such Court fees as payable for a suit seeking declaration of an instrument as 'null and void' and after taking into consideration the provisions of section 7(2)(a) and 7(2)(b) of the act of 1961.

9. It is made clear that this order is applicable only till registration of the suit and if after appearance of the defendant in the suit, any objection is raised before the Court about court fees, then the Court will decide it afresh without being influenced by this order.

10. With the above observations, the present civil writ petition stands disposed of.

11. Pending application(s), if any, also stands disposed of.

(BIPIN GUPTA),J

Sudha/