

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 7932/2018

Leeladhar S/o Kaluram, aged about 59 years, Resident- Plot No. 1199 Uniara Rao Ji Rasta, Chokdi Purani Basti, Chandpole Bazaar Jaipur

-----Petitioner-Plaintiff

Versus

1. Moolchand Jain S/o Unknown
2. Manish Kumar Jain S/o Moolchand Jain
Both Resident-Plot No. 1199, Uniara Rao Ji Ka Rasta, Purani Basti Chandpole Bazaar, Jaipur, Presently At Shop Jain Electrical Shop No. 64, Chandpole Bazaar, Jaipur

-----Respondents-Defendants

For Petitioner(s)	:	Mr. Gaurav Sharma Saraswat with Mr. Dipendra Singh Mr. Nakshatra Dhakar
For Respondent(s)	:	Mr. Yuvraj Sharma

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Reportable

Date of hearing and conclusion of arguments	12.03.2026
Date on which the judgment was reserved	12.03.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	19.03.2026

1. The present writ petition has been filed assailing the order dated 15.11.2017, passed by learned Additional Civil Judge-cum-Metropolitan Magistrate, No. 3, Jaipur Metropolitan, Jaipur, in Civil Original Suit No. 782/2013, whereby, an application preferred by the defendants-respondents under Order 14 Rule 2 (2) CPC was

partly allowed to the extent of issue pertaining to a disputed wall, being barred by principle of *res-judicata*.

2. The controversy in a narrow compass is that the plaintiff-petitioner had filed a suit for Perpetual and Mandatory Injunction against the defendants-respondents on account of the fact that the defendants have illegally raised a wall over the common boundary wall and intended to construct a cellar near to the said common boundary wall.

2.1 Controverting the same, a detailed written statement and counter-claim was filed by the defendants-respondents. Thereafter, a rejoinder was also filed by the plaintiff-petitioner. Subsequently, the issues were framed therein vide order dated 10.11.2009 and additional issues were framed vide order dated 31.03.2015.

3. During the stage of plaintiff's evidence, the defendants-respondents filed an application under Order 14 Rule 2(2) CPC for deciding Issue Nos. 6 and 7 as preliminary issue being purely question of law. Issue No.6 pertained to the issue whether the suit being barred by *res-judicata*, and thus the same being barred by law under the provisions of Order 7 Rule 11(d) CPC. Issue No. 7 pertained to whether a cause of action existed or not.

4. Learned Trial Court vide impugned order dated 15.11.2017 partly allowed the said application to the extent of Issue No.6 pertaining to a disputed wall, and held being barred by principles of *res-judicata* as on the basis of previous judgment dated 18.04.1977, passed in Suit No. 94/69 (137/74) titled as '*Harinarayan vs Kalu Ram*'.

5. Aggrieved by the said order, the plaintiff-petitioner preferred the present writ petition.

6. Learned counsel for the petitioner at the outset submitted that the learned Trial Court failed to consider the fact that the subject matter, parties and issues substantially and directly involved in the present matter and the suit decided earlier were different and distinct. Hence, the principle of *res-judicata* mandated under Section 11 CPC was not applicable.

6.1. Learned counsel for the petitioner submitted that the cause of action that arose between the parties in the present matter was not similar to the one involved in the previous suit. Learned counsel further clarified that the suit filed earlier pertained to issue of pre-emption whereas the present suit is for perpetual and mandatory injunction.

6.2. Learned counsel for the petitioner submitted that even otherwise in the judgment dated 18.04.1977, passed in the earlier suit, issue with regard to the common wall was neither framed nor heard/finally decided. Instead, the observation made in that judgment stated that the rights of the predecessor of the petitioner over the disputed wall were found to be of tenancy in common. He further relied upon the judgment passed in the case of **Sathyanath and Anr. vs Sarojamani**; (2022) 7 SCC 644 to advance his arguments and contended that the issue of *res-judicata* is a mixed question of law and fact and thus could not have been decided as preliminary issue without evidence.

6.3. Learned counsel for the petitioner further contended that the learned Trial Court seriously erred while passing the impugned

order dated 15.11.2017, as in the previous suit, the petitioner did not seek any relief with regard to the common wall be of ownership of anybody, however, in the present matter, the prayer sought was with regard to the said common wall.

7. Per contra, learned counsel for the respondents submitted that the averments made by the petitioner in the suit were completely false and untrue. He further submitted that the dispute relating to the common wall had earlier arisen between the previous owners of the properties and was the subject matter of Civil Suit No. 94/1969 titled as *Harinarayan vs Kaluram & Ors.*, which was decided by the Court of Additional District Judge No.1, Jaipur Nagar, vide judgment dated 18.04.1977 in which the Court categorically held that the disputed wall is not a common wall.

7.1. Learned counsel for the respondents contended that since the present parties derive their rights through the previous owners of the same properties, the findings recorded in the judgment dated 18.04.1977 are binding upon them and cannot be reopened in the present proceedings. Hence, as the said judgment has attained finality and is binding upon the parties as well as their successors-in-interest. Therefore, learned counsel for the respondent submitted that the present suit was barred by the principle of *res-judicata* and does not give rise to any fresh cause of action.

7.2. Learned counsel for the respondents submitted that Issue Nos. 6 and 7 framed by the learned Court below relate to pure questions of law. Thus, in view of provisions of Order 14 Rule 2 CPC, such legal issues were rightly decided as preliminary issues.

He further submitted that in the event if the Court comes to the conclusion that the suit is barred by principle of *res-judicata*, the entire trial would become unnecessary. Therefore, learned counsel for the respondents prayed that the present writ petition is liable to be dismissed and it would be in the interest of justice, convenience of the parties, and the learned Trial Court has rightly decided Issue Nos.6 & 7 as preliminary issues.

7.3. Learned counsel for the respondents relied upon the following judgments to buttress his arguments:

(i) ***Abdul Rahman vs Prasony Bai and Anr.***; (2003) 1 SCC 488.

(ii) ***Pushpa Devi vs. Chandrasekhar @ Kalu***; 2024 (1) RJT (Civil) 543.

(iii) ***Jassoram Alias Jassomal vs State of Rajasthan & Ors.***; S.B. Civil Second Appeal No.115/1991 (decided on 08.03.2000).

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

9. The primary issue that arises for determination is whether the plea of *res-judicata* under Section 11 CPC could have been treated as a preliminary issue under Order 14 Rule 2 CPC by the learned Trial Court.

For ready reference, Order 14 Rule 2 CPC is reproduced herein below:

"2. Court to pronounce judgment on all issues.—

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the

provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

10. Vide the Code of Civil Procedure (Amendment) Act, 1976 (Act 104 of 1976), the provision mandates that the Court shall pronounce judgment on all issues, and permits trial of a preliminary issue only in limited circumstances, namely when the issue relates to the jurisdiction of the Court or a statutory bar to the suit, and is capable of being decided purely as a question of law. Thus only the issues which can finally dispose off the suit can be tried as preliminary issue.

11. At the outset, this Court finds merit in the contention of the learned counsel for the petitioner that the subject matter, cause of action, and reliefs claimed in the present suit are distinct from those involved in the earlier suit decided vide judgment dated 18.04.1977. The earlier suit admittedly pertained to a claim of pre-emption, whereas the present suit seeks relief of perpetual and mandatory injunction in respect of a common wall. The nature of rights asserted and the reliefs claimed are thus materially

different. Consequently, it cannot be *prima facie* concluded that the issues directly and substantially in controversy in the present suit were the same as those adjudicated in the earlier proceedings. Further the suit has not been decided finally and has been kept pending.

12. This Court further finds that it is not disputed that in the earlier judgment, no specific issue regarding the common wall was either framed or finally adjudicated. The observations made therein merely indicate that the predecessor of the petitioner had rights in the nature of tenancy in common over the disputed wall. Such observations, in the absence of a specific issue and adjudication, cannot operate as a conclusive determination so as to attract the bar of principle of *res-judicata*.

13. Moreover, the plea of *res-judicata* in the present case cannot be said to be a pure question of law. Its determination would require the Court to examine whether the ingredients of Section 11 CPC are satisfied, including identity of parties, subject matter, and issues, as well as whether such issues were finally decided. This exercise would inevitably involve appreciation of evidence and factual inquiry. Hence, the plea clearly raises a mixed question of law and fact.

14. In the present case, although *res-judicata* is a statutory bar, its applicability is not apparent on the face of the record and depends upon determination of disputed facts. It is not a case where, on a plain reading of the plaint and the earlier judgment, the suit can be said to be barred. Therefore, the conditions

prescribed under Order 14 Rule 2(2) CPC are not satisfied so as to justify treating the plea as a preliminary issue.

15. This position is further fortified by the settled principle that mixed questions of law and fact cannot be tried as preliminary issues. The Hon'ble Apex Court in the case of **Sathyanath** (supra), while relying upon the landmark judgment of **S.S. Khanna v. F.J. Dillon**; AIR 1964 SC 497, held that the Court has no jurisdiction to try a suit on mixed issues of law and fact as preliminary issues, particularly when the decision on issues of law depends upon determination of facts. The relevant paragraph of the judgment is reproduced as under:

"17. This Court in Ramesh B. Desai held that the principles enunciated in Major S.S. Khanna still hold good and the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue depends upon the question of fact, it cannot be tried as a preliminary issue.

.....

21. The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues

with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

.....

33. *We find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of Sub-rule (2). However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under Clause (b) of Sub-rule (2)."*

(Emphasis Supplied)

16. In view of the aforesaid discussion, this Court is of the considered opinion that the plea of *res-judicata* in the present case ought to be decided along with other issues after permitting the parties to lead evidence. The issues involved being mixed questions of law and fact, the same cannot be segregated and tried as a preliminary issue. The approach adopted by the learned

Trial Court in proceeding to consider the plea of *res-judicata* as a preliminary issue, therefore, suffers from a legal infirmity.

17. Accordingly, the present writ petition is **allowed**. The order dated 15.11.2017, passed by the learned Additional Civil Judge-cum-Metropolitan Magistrate No. 3, Jaipur Metropolitan, Jaipur, in Civil Original Suit No. 782/2013, to the extent it treated the issue of *res-judicata* as a preliminary issue under Order XIV Rule 2 CPC, is hereby set aside.

18. The learned Trial Court is directed to proceed with the trial of the suit in accordance with law and to adjudicate the matter comprehensively by recording findings on all the issues arising from the pleadings, including the plea of *res-judicata*, after permitting the parties to lead evidence. However, it is made clear that no observation made in this order shall come in way of learned Trial Court while deciding the issue of *res-judicata* at final hearing.

19. The learned Trial Court shall ensure that the suit is decided on merits in its entirety and endeavor to expedite the proceedings and conclude the trial within a reasonable period.

20. Pending applications, if any, stand disposed of.

(BIPIN GUPTA),J

Sudha/