

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 7509/2026

Dinesh Chand S/o Shri Nemichand, Resident Of Kaswa,
Rajakhera Tehsil Rajakhera District Dholpur (Rajasthan)

----Petitioner(Defendant No. 2)

Versus

1 Ummed Chand Jain Late Dhaniram, Aged About 73 Years,
R/o Ward No. 18 Rajakhera District Dholpur.

Respondent-Plaintiff

2 Bhagwandas @ Khachera S/o Late Mavasilal, R/o Ward
No. 6, (Hanuman Ka Pura Wale) Rajakhera, District
Dholpur.

----Respondents(Defendant No. 1)

For Petitioner(s) : Mr. Sandeep Kalwania,
Mr. Sumit Kumar Jain

For Respondent(s) :

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment / Order

27/04/2026

1. The present writ petition has been filed assailing the order dated 12.03.2026, passed by learned Civil Judge-cum-Judicial Magistrate, Rajakhera, District-Dholpur, in Civil Case No. 08/2013, whereby the learned Trial Court has partly allowed the application filed by the plaintiff–respondent under Section 38 of the Rajasthan Stamp Act, 1998 (hereinafter referred to as the “Act of 1998”), and has impounded the instrument dated 05.11.1988 on the ground of insufficiency of stamp duty and referred the same to the Collector (Stamps).

2. Learned counsel for the petitioner submits that the issue of payment of stamp duty or objections regarding insufficiency

thereof can be raised only at the stage when the document is tendered in evidence, and not prior thereto.

3. Learned counsel for the petitioner submits that, while passing the order dated 12.03.2026, the learned Trial Court has deferred consideration of the respondent's objection regarding non-registration and admissibility of the document until the stage when the document is tendered in evidence.

4. Learned counsel for the petitioner contends that, on the same analogy, even with regard to stamp duty, the instrument could not have been directed to be sent to the Collector (Stamps) prior to its being tendered in evidence.

5. Accordingly, the learned counsel for the petitioner prays that the impugned order dated 12.03.2026 deserves to be quashed and set aside.

6. Heard learned counsel for the petitioner and perused the material available on records.

7. This Court finds that, under the Rajasthan Stamp Act, 1998, it is not a prerequisite that an instrument must be tendered in evidence before it can be impounded. Section 37 of the Act of 1998 (corresponding to Section 33 of the Indian Stamp Act, 1899) clearly mandates that every person having authority to receive evidence, and every person in charge of a public office, is required to examine any instrument produced before him in the discharge of his functions, and if it appears that such instrument is not duly stamped, the same shall be impounded. Section 37 of the Act of 1998 is reproduced hereinbelow:

"37. Examination and impounding of instruments.-

(1) Every person having by law or consent of parties authority to receive evidence, and every person incharge

of a public office, except an officer of a police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State when such instrument was executed or first executed:

Provided that -

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974);

(b) In the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section in cases of doubt -

(a) The State Government may determine what offices shall be deemed to be public offices; and

(b) The State Government may determine who shall be deemed to be persons incharge of public offices.

(4) When a person incharge of a public office, during the course of inspection or otherwise, detects from an instrument or copy thereof or when it appears therefrom to the person referred to in sub-section (1) that the instrument is not duly stamped, such person shall forthwith make a reference to the Collector in that matter.

(5) The Collector may, suo-moto or on such reference, call for the original instrument for ascertaining whether it is duly stamped and the instrument so produced shall be deemed to have been produced or come before him in the performance of his functions and in case the original instrument is not produced within the period specified by the Collector, he may require the payment of the proper duty or the amount required to make up the same together with the penalty under section 44."

8. A plain reading of Section 37 of the Act of 1998 further reveals that the duty to impound arises the moment an inadequately stamped instrument is produced or comes before such authority in the performance of official functions, irrespective of whether it has formally been tendered in evidence. Sub-section (4) of Section 37 further provides that once such an instrument is impounded, it is to be referred to the Collector for appropriate action.

9. In view of the statutory mandate, the contention of learned counsel for the petitioner that impounding can take place only at the stage of tendering the document in evidence is misconceived and contrary to the express provisions of Section 37 of the Act of 1998.

10. Accordingly, this Court finds no infirmity or illegality in the impugned order dated 12.03.2026 passed by the learned Trial Court warranting interference in exercise of writ jurisdiction.

11. Consequently, the present civil writ petition stands dismissed.

12. All pending applications stand disposed of.

(BIPIN GUPTA),J