

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil First Appeal No. 625/2019
CNR: RJHC020378082019 | URN: CFA / 927U / 2019

Murti Mandir Mohan Ji Maharaj Ji, Almashur Mandir Panchayat
Kumawatan Vake up in New Market City Sawai Madhopur
through next friend Panch Musaldar Rajasthan. Kumawatan
Sawaj Sawai Madhopur

- 1 Ashok Kumar S/o Ramdas Musaldar Kumawat aged about 43
Years, R/o Sawai Madhopur
- 2 Shankar S/o Suwalal Musaldar, aged about 78 Years, R/o City
Sawai Madhopur
- 3 Tej Kumar S/o Shrinarayan Musaldar Kumawat, aged about 70
Years, R/o near ITO Office, Sawai Madhopur

----Appellants

Versus

- 1 Rajendra Kumar Sharmas Pujari S/o Bajranglal Sharma, aged
about 58 Years, Adpoted S/o Purshottam Sharma Pujari,
Mandir Shri Mohan Ji Maharaj, Almashoor Mandir Panchayati
Kumawatan, New Market City, Sawai Madhopur
- 2 Smt. Asha Devi W/o Rajendra Kumar Sharma Pujari, aged
about 54 Years, New Market City, Sawai Madhopur
- 3 Abhimanyu S/o Rajendra Kumar Sharma Pujari, R/o New
Market City, Sawai Madhopur
- 4 Bholu Alias Chhotu S/o Rajendra Kumar Sharma Pujari, aged
about 22 Years, R/o New Market City, Sawai Madhopur
- 5 Mool Chand S/o Ghasilal, aged about 50 Years, R/o Sawai
Madhopur
- 6 Babulal S/o Laxmi Narayan, aged about 62 Years, R/o Sawai
Madhopur
- 7 Krishan Murari S/o Lala Ramjilal, aged about 45 Years, R/o
Sawai Madhopur
- 8 Jeetmal S/o Dwarka Prasad, aged about 70 Years, R/o Sawai
Madhopur
- 9 Mohan Lal S/o Panchulal, aged about 55 Years, R/o Sawai
Madhopur
- 10 Rakesh S/o Gopallal, Proprietor Rakesh General Store, Aged
50 Years House Board, Sawai Madhopur
- 11 Dhannalal S/o Bajranglal, aged about 60 Years, Proprietor
Ankit Matching Centre, R/o Sawai Madhopur
- 12 Imthaj S/o Mubeen, aged about 50 Years, Proprietor Vagon
General Store, Sawai Madhopur
- 13 Madan Mohan S/o Manorilal, aged about 55 Years, R/o Sawai
Madhopur
- 14 Bhagwan S/o Chhotelal, aged about 55 Years, R/o Chai Ki
Dukan, Sawai Madhopur
- 15 Raju S/o Chothmal, aged about 45 Years, R/o Chuda Ki Dukan,
Sawai Madhopur
- 16 Tularam S/o Mool Chand, aged about 50 Years, R/o Sawai
Madhopur
- 17 Muklleep Alias Muklleaf S/o Abdul Gani, aged about 40 Years,
R/o Sawai Madhopur
- 18 Akhtar S/o Abdul Salam, aged about 45 Years, Proprietor
Indian Tailor, R/o Sawai Madhopur
- 19 Munna Bhai S/o Bashir Bhai, R/o Sawai Madhopur
- 20 Jakir S/o Mohammad Ayub, aged about 45 Years, Proprietor
Jakir Tailors, R/o Sawai Madhopur
- 21 Prahlad S/o Ramnath, aged about 65 Years, R/o Sawai
Madhopur
- 22 Satish S/o Chothmal, aged about 42 Years, R/o Sawai

23 Madhopur
Vijay S/o Mool Chand, aged about 42 Years, R/o Sawai
Madhopur

-----Respondents

For Appellant(s) : Mr. Devendra Kumar Bhardwaj with
Ms. Jaya Soni
For Respondent(s) : Mr. R.K. Daga with
Mr. Anuj Pareek

HON'BLE MR. JUSTICE MANEESH SHARMA
Order

19/08/2026

1. The present Civil First Appeal has been filed by the plaintiffs/appellants assailing the impugned judgment and decree dated 25.01.2019 passed by the learned District Judge, Sawai Madhopur, in Civil Suit No. 07/2017 titled as Murti Mandir Mohan Ji Maharaj v. Rajendra & Ors., whereby the civil suit filed by the plaintiffs/appellants was dismissed.

2. The brief facts germane to the present appeal are that the plaintiffs/appellants instituted a civil suit for declaration and permanent injunction with regard to the property of Murti Mandir Mohan Ji Maharaj situated at New Market, City Sawai Madhopur. In the plaint, it was averred that the Panch Musaldar Kumawatan Samaj, Sawai Madhopur, is an unregistered institution having various devotees, and the said temple was constructed jointly by the members of the Panch Musaldar Kumawatan Samaj and is being managed by them since time immemorial.

2.1. It was stated that in the town survey, it was recorded that the Murti Mandir was constructed by the Mushaldar Kumawatan and is known as Mandir Panchayati Mushaldar Kumawatan. It was further averred that defendant/respondent No. 1 and his family members started declaring the aforesaid property as their own, began collecting rent from the tenants, and used the said rent for

their personal use. When the plaintiffs/appellants objected to this, an altercation took place between the plaintiffs/appellants and defendant/respondent No. 1 and his family members.

2.2. It was averred that in light of the aforesaid facts, the present civil suit was instituted on 27.02.2007, seeking a declaration and a permanent injunction to restrain defendant Nos. 4 and 5 from creating any hindrances in the collection of rent or the day-to-day management of the temple, and for a further direction to hand over the accounts of the money thus far received.

3. Upon service of summons in the said suit, the defendants filed an application on 17.03.2017 under Order 7 Rule 11 of the CPC seeking rejection of the plaint. It was asserted that the suit, purportedly filed under Sections 91 and 92 of the CPC, is not maintainable as the mandatory prior leave of the Court was not obtained by the plaintiffs/appellants.

3.1. It was also contended that the suit is barred by limitation due to a prior ownership dispute and legal notice dating back to 1954; barred by the principle of res judicata under Section 11 of the CPC in light of a previous decision dated 08.01.1996 passed by the Assistant Commissioner, Devasthan Department, Kota; and barred by estoppel as the defendants have been continuously managing the temple and collecting rent without objection. Lastly, objections regarding undervaluation, deficient court fee, and the absence of the plaintiffs/appellants' name in the town survey records were also raised to press for the rejection of the plaint.

4. Thereafter, the said application dated 17.03.2017 was initially rejected by the learned Trial Court vide order dated

16.03.2018. Subsequently, the matter travelled to this Court as the defendants challenged the said order by preferring S.B. Civil Revision Petition No. 118/2018. The said revision petition was allowed by this Court vide order dated 26.11.2018, whereby the matter was remanded back to the Trial Court for fresh adjudication.

5. After the matter was remanded, the learned Trial Court reheard the arguments and thereafter, vide the impugned judgment and decree dated 25.01.2019, allowed the application under Order 7 Rule 11 of the CPC and rejected the plaint, holding the suit to be barred by Section 73 of the Rajasthan Public Trust Act, 1959 (hereinafter referred to as 'the Act of 1959'). The Trial Court placed reliance upon the oral argument raised by the defendants and the written statement, stating that the subject temple was registered as a public trust on 08.01.1996. It was further held that the plaintiffs/appellants ought to have sought remedies under Sections 38, 39, and 40 of the Act of 1959.

6. Aggrieved thereby, the appellants have preferred the present appeal.

7. Learned counsel for the plaintiffs/appellants submits that the learned Court below erred in allowing the application under Order 7 Rule 11 of the CPC and rejecting the plaint without a proper appreciation of the facts and pleadings. He further contends that the learned Trial Court erroneously allowed the application by presuming it to be an admitted fact that the temple is a registered public trust. Consequently, the learned Trial Court wrongly concluded that the plaintiffs/appellants should have sought

remedies under Sections 38, 39, and 40 of the Act of 1959, and that the subsequent rejection of the plaint under Section 73 thereof is per se illegal. He, therefore, prays that the impugned judgment and decree may kindly be set aside.

8. Per contra, the learned counsel for the respondents vehemently opposes the said submissions and contends that the learned Trial Court, after meticulously considering all the facts and averments made in the plaint, rightly concluded that the suit is barred by virtue of the provisions of Section 73 of the Act of 1959. He, therefore, prays for dismissal of the present Civil First Appeal.

9. Heard submissions advanced at bar and perused the material available on record.

10. At this juncture, it is pertinent to note that though various arguments have been raised by the defendants/respondents in the application filed under Order 7 Rule 11 of the CPC, the learned Trial Court has rejected the plaint under Order 7 Rule 11(d) of the CPC by invoking Section 73 of the Act of 1959, holding the plaint to be barred by law.

11. In order to appreciate the issue at hand, it would be appropriate to re-produce Order 7 Rule 11 of CPC as under:

"Rejection of plaint - *The plaint shall be rejected in the following cases:-*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.] "

12. From a bare perusal of the plaint, it is nowhere reflected that the plaintiffs/appellants have either averred or admitted that the subject temple is a registered public trust. On the contrary, this assertion has only been made by the defendants in their written statement, wherein it has been contended that the subject temple has been registered as a public trust on 08.01.1996.

13. It is a well-settled proposition of law that since the power conferred upon the Court to terminate a civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 of the CPC for the exercise of the power to reject a plaint must be strictly adhered to. The averments made in the plaint must be read as a whole to ascertain whether the suit is barred by any law.

14. The Hon'ble Apex Court in the matter of ***Saleem Bhai and Ors. Vs. State of Maharashtra and Ors.***¹, has held as under:

"9. A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any state of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 of Order VII C.P.C., the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage....."

¹ AIR 2003 SC 759

15. The above legal proposition was re-iterated by the Hon'bl Apex Court in the matter of **Ramesh B. Desai and Ors. Vs. Bipin Vadilal Mehta and Ors.**², wherein it was held as under:

"14.....The principle is, therefore, well settled that in order to examine whether the plaint is barred by any law, as contemplated by Sub-rule (d) of Order VII Rule 11 CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence....."

16. Thus, it is trite law that the question as to whether the suit is barred by any law would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint.

17. Although in the impugned order the learned Trial Court has observed that in the plaint it is nowhere pleaded or admitted that the subject temple is either registered under the Act of 1959 or the same is a Public Trust, the learned Trial Court committed a grave error by relying upon the averments made in the defendants' application to presume that the property belongs to a registered public trust. By drawing a presumption that is completely absent from the averments of the plaint, and by subsequently invoking Section 73 of the Act of 1959 to reject the plaint, the learned Trial Court has acted in a perverse and per se illegal manner. Thus, the reasons assigned by the learned Trial Court for rejecting the plaint are legally unsustainable.

18. Insofar as the other submission of the learned counsel for the respondents is concerned, that the suit should not have proceeded since the application filed under Order 1 Rule 8 of the CPC was kept pending, it is an admitted position between both the parties during the course of arguments that the said application was indeed filed but has not yet been adjudicated. However, this procedural pendency does not validate the erroneous rejection of the plaint under Order 7 Rule 11 of CPC.

19. The learned counsel for the respondents has also raised several arguments based on various other objections pleaded in the application under Order 7 Rule 11 of CPC to show that it is evident that the plaint is barred by law. However, since the impugned rejection of the plaint was not based upon those grounds, this Court refrains from delving into that aspect at this stage. Therefore, the arguments raised by the respondents lack merit and cannot be accepted.

20. In the upshot of the foregoing discussions, the present Civil First Appeal is allowed. The impugned judgment and decree dated 25.01.2019 passed by the learned Trial Court is hereby set aside.

21. However, it is made clear that the defendants are at liberty to press the arguments viz Section 73 of the Act of 1959, along with all other arguments raised in their written statement, during the course of the trial. The learned Trial Court shall frame appropriate issues in this regard and adjudicate the same based on the evidence adduced by the parties.

22. The parties are directed to remain present before the learned Trial Court on 16.09.2026. The learned Trial Court shall take back

the plaint, restore the civil suit to its original number, proceed with the trial from the stage it was at when the plaint was rejected, and adjudicate the suit on merits, strictly in accordance with law.

23. As a necessary corollary, all pending applications, if any, shall stand disposed of.

(MANEESH SHARMA),J

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