



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 18193/2025

1. Liyaqat Khan S/o Late Shri Raheem Khan, aged about 57 Years,
2. Smt. Anwari W/o Late Shri Shaukat Khan Daughter-in-law of Shri Raheem Khan, aged about 47 Years,
3. Afzal S/o Late Shri Shaukat Khan, aged about 33 Years,
4. Firoz Khan S/o Late Shri Shaukat Khan, aged about 28 Years,
5. Hameed Khan S/o Late Shri Shaukat Khan, aged about 24 Years,
6. Parveen D/o Late Shri Shaukat Khan, aged about 26 Years,
7. Sabina D/o Late Shri Shaukat Khan, aged about 32 Years,  
All Residents of Ward Number 35, Maunim Pura, Chejaro  
Ka Mohalla, Fatehpur Shekhawati, District Sikar

----Petitioners

Versus

Smt. Mumtaz D/o Late Shri Raheem Khan, aged about 62 Years,  
R/o Ward Number 35 Maunin Pura, Chejaro Ka Mohalla,  
Fatehpur Shekhawati, District Sikar, currently residing at House  
Number 90/91, Sanjay Nagar - C Near Noorani Masjid, Jhotwara,  
Jaipur.

----Respondent

---

|                   |   |                                                                     |
|-------------------|---|---------------------------------------------------------------------|
| For Petitioner(s) | : | Mr. Aditya Matolia                                                  |
| For Respondent(s) | : | Mr. Sikander Ali Chopdar with<br>Mr. Afroza Bano<br>Mr. Shama Aajmi |

---

**HON'BLE MR. JUSTICE MANEESH SHARMA**

**Order**

**06/05/2026**

1. The present writ petition has been filed by the petitioners under Article 227 of the Constitution of India, assailing the order dated 01.11.2025, passed by the learned Additional District and Sessions Judge, Fatehpur, District Sikar, in Civil Suit No. 139/2016 titled '*Smt. Mumtaz vs. Liyaqat Khan and Ors.*', whereby the plaintiff/respondent's application filed under Order 23 read with Section 151 of the CPC has been allowed, and the plaintiff has been permitted to withdraw the suit for partition in respect of the



agricultural land with liberty to file a fresh suit before the learned Revenue Court.

2. Brief facts giving rise to the present writ petition are that the plaintiff/respondent filed a suit for partition, settlement, and permanent injunction against the defendants on 21.10.2016, stating therein that late *Rahim Khan* died intestate on 15.04.2011, leaving behind one daughter (the plaintiff/respondent) and three sons (*Liyaqat Khan, Shaukat Khan, and Salim Khan*). It was further stated that late *Salim Khan* died unmarried on 03.08.2016, and late- *Shaukat Khan* died on 18.02.2000, leaving behind a wife, three sons, and two daughters. It was averred that late- *Rahim Khan* left behind the suit properties and that the plaintiff/respondent and defendants are tenants in common of the suit properties. The plaintiff/respondent accordingly prayed for partition, settlement, and possession of the suit property.

3. Upon service in the said suit, the petitioner, along with defendant Nos. 2, 4, and 5, replied to the suit vide a written statement, vehemently opposing the averments in the plaint. It was contended that the plaintiff/respondent is not an heir entitled to the suit properties left behind by late- *Rahim Khan*.

4. Thereafter, the learned Trial Court vide order dated 19.02.2022, referred the issue qua the agricultural land described in Para No.5 of the plaint to be adjudicated by the learned Revenue Court.

5. Subsequently, looking to the delay in disposal of the revenue suit, the plaintiff/respondent filed an application under Order 23 read with Section 151 of the CPC for withdrawing the suit in



respect of the agricultural land, seeking liberty to file a fresh suit before the learned Revenue Court.

6. The petitioner filed a reply to the said application, stating therein that the learned Revenue Court is not subordinate to the learned Trial Court; thus, a direction to the learned Revenue Court cannot be issued by the learned Trial Court.

7. The learned Trial Court, after hearing the arguments of the parties and considering the averments raised in the application and the reply thereto, allowed the application and permitted the plaintiff/respondent to withdraw the suit in respect of the agricultural land with liberty to file a fresh suit before the learned Revenue Court.

8. Aggrieved by the same, the petitioners have preferred the present writ petition.

9. Learned counsel for the petitioners submits that the learned Trial Court erred in allowing the plaintiff/respondent's application, submitting that the proper course for withdrawing the suit is to move an application before the Revenue Court, not before the Civil Court. He further submits that since it is a partition suit, the aforesaid liberty cannot be granted to the plaintiff because the plaintiff and defendant both stand on the same footing. He, therefore, submits that the impugned order deserves to be set aside, being bad in law. In order to buttress his contention, he places reliance upon the judgment passed by the Hon'ble Supreme Court in the case of ***K.G. Shankara Babu Vs. M. Chandra Shekar***<sup>1</sup>.

---

1 2025 Supreme (Kar) 1539



10. Per contra, learned counsel for the respondent supported the impugned order and submitted that the present suit has been listed for final hearing, whereas the revenue suit is pending at the stage of service; therefore, he filed an application seeking leave of the Court for withdrawal of the suit with liberty to file a fresh suit before the learned Revenue Court. He further submits that since the learned Trial Court referred the issue qua agricultural land to be tried by the learned Revenue Court vide order dated 19.02.2022, the application was filed before the Trial Court; it was accordingly prayed that the present writ petition may be dismissed.

11. Heard learned counsel for the petitioners and perused the material available on record.

12. From a bare perusal of the record, it is revealed that the present suit has been filed in respect of properties described in Para Nos.4, 5 and 6 of the plaint. Para No. 5 relates to the agricultural land, and Para Nos.4 & 6 relates to the residential properties. Therefore, the learned Trial Court, vide order dated 19.02.2022, referred the said issue relating to the agricultural land described in the Para No.5 of the plaint to the Revenue Court for trial.

13. It is also revealed from the record that in the revenue suit, service has not yet been effected and the suit is pending for service of the respondents, whereas the present suit is listed for final hearing. Therefore, to avoid further delay in disposal of the present suit while keeping the rights of the parties reserved, the court permitted the plaintiff to withdraw the suit in respect of the agricultural land described in Para No.5 of the plaint, with liberty



to file a fresh revenue suit in respect of the same. Since the permission has been granted to the plaintiff, the present petitioner cannot compel the plaintiff to continue with the suit. Apart from the above, the reasoning given for accepting the application cannot be said to be perverse in the eyes of the law.

14. As far as the judgment relied upon by learned counsel for the petitioner in **K.G. Shankara Babu** (*Supra*) is concerned, the same stands on a different footing and is distinguishable from the facts of the present case, as the facts of the said case clearly demonstrate that the said judgment is in relation to controversy related to not pressing the entire suit for partition and resultantly, the defendant seeking transposition, unlike the aforesaid judgment, the plaintiff in the present matter has not abandoned the entire relief claimed in the suit; rather, she has merely sought withdrawal of part relief qua agricultural property with liberty to file a fresh suit before the learned Revenue Court, that too in order to expedite the decision of the suit qua residential properties.

15. In that view of the matter, this Court is of the considered opinion that the impugned order does not suffer from any jurisdictional error, perversity, or legal infirmity so as to call for any interference under Article 227 of the Constitution of India.

16. Accordingly, the present writ petition fails and is hereby dismissed.

17. All other pending application(s), if any, stand disposed of.

**(MANEESH SHARMA),J**