



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Writ Petition No. 19263/2024

1. Lrs. Of Late Sanwarmal Sharma:-
- 1/1 Mukesh S/o Late Sawarmal Sharma, by caste Brahmin,
Aged About 49 Years, R/o Paota C Road, Teesri Gali,
Jodhpur.
- 1/2 Sulochana D/o Late Sawarmal Sharma, by caste Brahmin,
Aged About 68 Years, R/o Paota C Road, Teesri Gali,
Jodhpur.

-----Petitioners

Versus

1. Smt. Seeta Devi W/o Shri Ramgopal Ji, Daughter Of Late
Shri Bhagwandas Ji, R/o Village Balara, Laxmangarh District
Sikar.
2. Vinod Kumar Sharma S/o Late Sh. Bhagwandas Ji Sharma,
R/o Caf-17, Highcourt Colony, Jodhpur.
3. Late Sh. Sawarmal Sharma, Through Legal Representative -
- 3/1 Sarita D/o Late Sh. Sawarmal Sharma.
- 3/2 Poonam D/o Late Sh. Sawarmal Sharma.
Respondents No.3/1 & 3/2 are by caste Brahmin, R/o Paota
C Road, Teesri Gali, Jodhpur.
6. Ramnarayan Sharma S/o Late Sh. Bhagwandas Ji Sharma,
R/o Plot No. 60, Imartiya Bera, Paota C Road, Jodhpur.

-----Respondents

For Petitioner(s) : Mr. J.K.Bhaiya.
For Respondent(s) : Mr. O.P. Mehta through VC.
Mr. V.D.Gaur.

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

Reportable

10/02/2025

Heard learned counsel for the parties.



The present writ petition has been filed against the order dated 24.10.2024 passed by Additional District Judge No.6, Jodhpur Metropolitan, Jodhpur in Original Civil Suit No.51/2013 (N.C.V. No.14935/2014) titled as "Sita Devi V/s Sanwarmal" whereby the application preferred by late Sanwarmal Sharma for referring the matter to the revenue court on the issues framed on the agricultural land has been dismissed.

Learned counsel for the petitioners submits that plaintiffs preferred a suit seeking decree of partition, which is pending consideration before the Civil Court. He submits that as per the issues framed by the learned trial court, one of the issues pertains to the partition of the land, which is agriculture in nature. Learned counsel submits that the issue with respect to the partition of agriculture land is required to be sent to the revenue court for its adjudication. To buttress his contention, learned counsel for the petitioners has relied upon the judgment dated 16.02.2015 passed by a Coordinate Bench of this Court in **S.B.Civil Writ Petition No.2866/2014 (Modu Ram V/s Board of Revenue & Ors.)** and judgment dated 03.12.2024 passed by a coordinate bench of this court in **S.B.Civil First Appeal No.673.2024 (Sua Lal V/s Kanhi & Ors.)**. The learned trial Court has committed an error while rejecting the application preferred by the petitioners. He, therefore, prays that the writ petition filed by the petitioners may be allowed and the order dated 24.10.2024 may be quashed and set aside.

Per contra, learned counsel for the respondents submits that there is no dispute with respect to the nature of the land, rather a suit seeking a decree of partition simplicitor has been filed. He



submits that there is no tenancy dispute between the parties, therefore, the matter may not be referred to the revenue court for deciding the issue seeking a decree of partition of an agricultural land and therefore, the learned trial court has not committed any illegality, infirmity and jurisdictional error while passing the order dated 24.10.2024. He prays that no interference is warranted in the order passed by the learned trial court, therefore, the writ petition filed by the petitioners may be dismissed.

I have considered the submissions made at the bar and also gone through the relevant record of the case including the order dated 24.10.2024 passed by the trial court.

It will be useful to reproduce Section 242(1) of the Rajasthan Tenancy Act, 1955 as under :-

"242. Procedure when plea of tenancy rights raised in Civil Courts-

(1) If in any suit relating to agricultural land instituted in a civil court, any question regarding tenancy rights arises and such question- has not previously been determined by a revenue court of competent jurisdiction, the civil court shall frame an issue on the plea of tenancy and record to the appropriate revenue court for the decision of that issue only.

Explanation- *A plea of tenancy which is clearly untenable and intended solvely to post the jurisdiction of the civil court shall not be deemed to raise a plea of tenancy".*

(emphasis supplied)

This court also deems it appropriate to quote the issues framed by learned trial court vide order dated 15.09.2016 in the suit instituted by the plaintiffs-respondents, which reads as under:-

"0.1 आया कि वादीगण वाद पत्र के पैरा सं. 01 में वर्णित संयुक्त अविभाजित सम्पत्ति का 1/3-1/3 हिस्सा एवं वाद पत्र के पैरा सं. 1 (अ) में वर्णित संयुक्त अविभाजित कृषि भूमि का 1/4-1/4 हिस्सा प्राप्त करने के हकदार है?

...वादीगण

02. आया कि प्रतिवादी सं. 1/1 से 1/4 को वाद पत्र के पैरा सं. 1 में वर्णित संयुक्त अविभाजित सम्पत्ति में कोई तोड़ फोड़ व नया निर्माण करने का कोई अधिकार नहीं है?

...वादीगण



03. आया कि वादीगण वाद पत्र के पैरा सं. 01 व 1 (अ) में वर्णित विवादग्रस्त सम्पत्ति का बाई मीटस एण्ड बाउण्डस बटवाडा कराने के हकदार है?

...वादीगण

04. आया कि वादीगण को वाद से कोई बिनायादावा उत्पन्न नहीं होने से वाद खारिज होने योग्य है?

प्रतिवादी 1/1 से 1/4

05. आया कि वादीगण का वाद अपर्याप्त न्यायशुल्क पर पस्तुत होने से खारिज योग्य है?

...प्रतिवादी 1/1 से 1/4

06. अनुतोष ?

स्पष्टीकृत किया गया, अन्य कोई विवाक नहीं सुझाये गये।”

The admitted facts in the present case are that the parties have some dispute with regard to partition of the properties in question. It is also an admitted position that one of the properties is an agricultural land for which an issue has been framed by the trial court and the issue No.1 includes urban land as well as agricultural land too for which partition has been sought for.

It is a settled law that civil court is having jurisdiction to decide the question of partition of the properties where no revenue dispute is involved. In the present case, since the issues framed do not reflect any dispute with regard to the tenancy of the agricultural land, therefore, the civil court is having jurisdiction to decide the issues framed therein.

It is further observed that as per Section 242 (1) of the Rajasthan Tenancy Act, 1955 if any suit relating to the agricultural land is instituted in the civil court and any question regarding the dispute relating to tenancy right is there then and the same has not been previously determined then the matter may be referred to the revenue court for adjudication of the same. In the present case, since there is no dispute as far as the tenancy rights are concerned, therefore, learned civil court is having jurisdiction to decide the issues framed therein.



Section 242 (1) of the Rajasthan Tenancy Act, 1955 as quoted above, specifically provides that matter can be sent to the revenue court for adjudication only when there is dispute with respect to tenancy rights, but when there is no dispute with respect to the tenancy rights and a suit for partition has been filed simplicitor then in the considered opinion of this court, even if the partition of the agricultural land is sought for, the Civil Court is having absolute jurisdiction to decide the same. Therefore, this court is of the considered opinion that the learned trial court has not committed any illegality while passing the order dated 24.10.2024.

So far as the judgments relied upon by learned counsel for the petitioners are concerned, the same are clearly distinguishable on the ground that in these two cases, the declaration of Khatedari rights have been sought and therefore, the issues framed therein have been rightly sent for adjudication by the revenue courts, whereas in the present case, there is no dispute with respect to the tenancy and therefore, in the facts and circumstances of the present case, both the judgments relied upon by learned counsel for the petitioners are not applicable.

In view of the discussion made above, no interference is warranted in the order dated 24.10.2024 passed by the Additional District Judge No.6, Jodhpur Metropolitan, Jodhpur. The writ petition filed by the petitioners being bereft of any force, is hereby dismissed.

(VINIT KUMAR MATHUR),J

95-Anil Singh/-