[2026:RJ-JD:41116]

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 10409/2017

CNR: RJHC010850972017 | URN: CW / 24818U / 2017

Harisingh Rajput, son of Shri Raghunathsingh ji, aged 67 years, Resident of Jalam Vilas, B Road, Paota, Jodhpur.

----Petitioner

Versus

1. Dr. Chhail Singh, son of Shri Mangilalji Gehlot Mali, aged 75 years, Resident of Bhagat Singh Road, outside Nagori Gate, Jodhpur.
2. Sawat Singh, son of Shri Mangilalji.
3. Om Prakash, son of Shri Devilalji.
4. Manmohan, son of Shri Bhanwarlalji.
5. Dileep, son of Shri Veersinghji.
6. Shyamadevi, wife of Shri Jethusinghji.
7. Madan Gopal, son of Shri Achaluramji.
8. Pushkaraj, son of Shri Chhotmalji Ojha.
9. Chhwar Singh, son of Shri Kishorji, through his LRS:—

    9/1. Yashwant Singh, son of late Shri Chhanwar Singhji Gehlot.

    9/2. Gajendra Singh, son of late Shri Chhanwar Singhji Gehlot.

    Both residents of Sukhlala Bera, Mandore, Jodhpur.

    9/3. Aruna, wife of Shri Balveersinghji Sankhla, resident of Daziyoyn Ka Bas, Magra Punjla, Jodhpur.

    9/4. Vandana alias Veena, wife of Shri Dhirendrasinghji Tak, resident of Do Koton Ke Beech, Ghantaghar, Jodhpur.

10. Harisingh Bhati, son of Shri Ratnoji.
11. Nirmaladevi, wife of Shri Bhimraj ji Vyas.
12. S.P. Vyas, son of Shri Somdattji.

Respondents No.2 to 8, 10 and 12 are residents of Bhagat Singh Road, outside Nagori Gate, Jodhpur.

13. Shyamsingh, son of Shri Ladusinghji, through his LRS:—

    13/1. Smt. Bhagwatidevi, wife of late Shri Shyamsinghji Bhati.

    13/2. Shravan Kumar, son of late Shri Shyamsinghji Bhati.

    Both residents of Bhatiyon Ka Bas, Magra Punjla, Jodhpur.

13/3. Smt. Sharmila, wife of Shri Vijaypalji Mali, resident of Dileep Nagar, Lalsagar, Jodhpur.

13/4. Smt. Santosh Gehlot, wife of Shri Narpat Singhji Mali, resident of Chakwal Bera, Nayapura, Jodhpur.

13/5. Smt. Tara, wife of Shri Shantilalji Mali, resident of Kheme Ka Kuan, Jodhpur.

13/6. Smt. Rajni, wife of Shri Jitendrasinghji Mali, resident of Gopi Ka Bera, Mandore, Jodhpur.

14. Rajveersingh, son of Shri Raghunathsinghji Rajput, Resident of 22 Chandpath, Suraj Nagar West, Civil Lines, Jaipur.

15. Smt. Harendrakunwar, daughter of late Shri Raghunathsinghji, wife of late Shri Harishchandrsinghji, Resident of Shivkupa, Village Ranāsar, Via Harsol, District Sabarkantha, Gujarat.

16. Smt. Jyotsnasingh, wife of Shri Jaydeep Singhji Rajput, Resident of B-4, New Colony, Jaipur.

----Respondent

For Petitioner(s)	:	Mr. S.K. Maloo Mr. Ravi Maloo
For Respondent(s)	:	Mr. O.P. Mehta Mr. Tanay Jain Mr. Arpit Bhoot Mr. V.D. Gaur Mr. Pawan Gupta

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

17/08/2026

1. The present writ petition under Articles 226 and 227 of the Constitution of India has been filed against the order dated 17.08.2017 (Annexure-4) passed by the learned Additional District Judge No.4, Jodhpur Metropolitan in Civil Original Suit No.190/2014, whereby the application of the petitioner seeking

consideration and disposal of Issue No.4 as a preliminary issue was declined.

2. The relevant facts leading to filing of the writ petition are that the respondent-plaintiffs instituted a civil suit in relation to the property in question, relying upon, inter alia, an agreement dated 04.03.1976 and another agreement dated 21.06.2001. A certified copy of the plaint and the documents relied upon by the plaintiffs were placed on the record of the civil suit.

3. The defendants contested the suit by filing their respective written statements. The defendants, inter alia, disputed the enforceability and admissibility of the documents relied upon by the plaintiffs. It was specifically pleaded that the alleged agreements were neither duly stamped nor registered and, therefore, were not admissible in evidence. It was also pleaded that certain defendants were minors at the relevant time and that the alleged agreement was otherwise incapable of conferring the rights claimed by the plaintiffs.

4. On 10.07.2009, the learned trial Court framed ten issues in the suit. Issue No.4 was framed in substance to the effect as to whether the document relied upon by the plaintiffs was inadmissible in evidence on account of not having been executed on sufficient stamp paper and not being registered.

5. Thereafter, the proceedings continued for several years. On 10.10.2011, the plaintiff's evidence by way of affidavit was tendered. At that stage, an objection was raised on behalf of defendant No.1 with regard to the admissibility of the document

relied upon by the plaintiffs, specifically on the ground that the document was neither registered nor properly stamped. The trial Court thereupon directed that arguments be heard first on Issue No.4. The matter, however, did not attain finality on Issue No.4 and the proceedings continued to be adjourned from time to time. On 27.11.2012, the original suit was transferred from the Court of learned Additional District Judge No.2 to the Court of learned Additional District Judge No.6. Subsequently, after further proceedings, the suit was again transferred and ultimately came before the Court of learned Additional District Judge No.4.

6. During the pendency of the proceedings, proceedings under Order XXII Rules 3 and 9 CPC were undertaken on account of the death of the plaintiff(s), resulting in substitution of the legal representatives. The proceedings on Issue No.4 nevertheless continued and the issue remained pending without being finally adjudicated.

7. On 08.07.2015, the trial Court passed a detailed order in the proceedings concerning Issue No.4. The plaintiffs thereafter amended the title of the suit and the matter was again fixed for arguments on Issue No.4. The issue continued to be listed on several dates. Ultimately, on 18.01.2017, arguments on Issue No.4 commenced. During the course of hearing, the defendants sought time for addressing arguments and the matter was adjourned. The proceedings thereafter continued towards hearing on the said issue.

8. On 17.08.2017, the learned Additional District Judge No.4, Jodhpur Metropolitan passed the impugned order (Annexure-4). The trial Court considered the rival submissions regarding whether Issue No.4 could be treated as a preliminary issue under Order XIV Rules 1 and 2 CPC. The trial Court observed that Issue No.4 was not purely a question of law but involved a mixed question of fact and law. It further held that the documents relied upon by the plaintiffs and the objections regarding their admissibility would require consideration in the light of the material available on record and the evidence to be led by the parties. The trial Court consequently declined the prayer of the defendants/petitioners to decide Issue No.4 as a preliminary issue and directed that the suit proceed further in accordance with law.

9. Aggrieved by the aforesaid order dated 17.08.2017, whereby the trial Court declined to decide Issue No.4 as a preliminary issue despite the prolonged pendency of the said issue and the objection regarding the insufficiency of stamp duty and non-registration of the documents relied upon by the plaintiffs, the petitioner has approached this Court by way of the present writ petition under Articles 226 and 227 of the Constitution of India.

10. Heard learned counsel for the petitioners and learned counsel appearing for the respondents. Perused the impugned order, the pleadings and the material placed on record.

11. Learned counsel for the petitioners submitted that Issue No.4 relates to the admissibility of the agreement dated 04.03.1976 relied upon by the plaintiffs and that the objection

thereto is founded on the admitted position that the document is neither duly stamped nor registered. It was submitted that the objection regarding non-registration is required to be considered in the light of the proviso to Section 49 of the Registration Act, 1908, whereas the objection regarding insufficiency of stamp duty is required to be dealt with in accordance with the provisions of the Rajasthan Stamp Act, 1998. Learned counsel submitted that the said issue has remained pending for several years and that repeated dates have been granted for hearing thereon, resulting in substantial delay in the disposal of the suit.

12. Per contra, learned counsel appearing for the respondents-plaintiffs opposed the prayer for treating Issue No.4 as a preliminary issue. It was submitted that the provisions of Order XIV Rule 2 CPC do not permit an issue involving mixed questions of fact and law to be tried as a preliminary issue. It was further submitted that the controversy relating to the documents relied upon by the plaintiffs cannot be finally adjudicated without consideration of the pleadings and evidence of the parties and, therefore, the learned trial Court rightly declined to dispose of Issue No.4 as a preliminary issue. It was also submitted that, instead of fragmenting the trial, all the issues should be decided together so that the suit may attain finality.

13. In view of the rival submissions, the questions which arise for determination in the present writ petition are whether, in the facts and circumstances of the case, Issue No.4 could legally be directed to be decided as a preliminary issue under Order XIV Rule

2 CPC; what is the legal effect of the agreement relied upon by the plaintiffs being unregistered in a suit for specific performance; what is the consequence of the admitted insufficiency of stamp duty on the said document and the course required to be adopted in that regard; and whether the impugned order dated 17.08.2017 calls for interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

14. Before examining the controversy on merits, it would be appropriate to notice the settled principles governing consideration of preliminary issues under Order XIV Rule 2 CPC. Order XIV Rule 2 CPC, after its amendment, requires the Court to pronounce judgment on all issues, subject to the limited exception that where an issue of law relates to the jurisdiction of the Court or to a bar to the suit created by any law for the time being in force, the Court may try such issue first if it considers that the case or any part thereof may be disposed of on such issue.

15. The distinction between a pure question of law and a mixed question of law and fact is, therefore, material. A question which can be decided without recording evidence and which goes to the jurisdiction of the Court or constitutes a statutory bar to the suit may, in an appropriate case, be tried as a preliminary issue. However, where determination of the issue requires investigation into facts or appreciation of evidence, the same cannot ordinarily be tried as a preliminary issue.

16. The aforesaid principle, however, does not mean that an objection relating to the admissibility of a document must

necessarily remain undecided until the conclusion of the entire trial. Whether a particular document is admissible, and what statutory consequence follows from its non-registration or insufficiency of stamp duty, are questions which have to be considered with reference to the nature of the document, the relief claimed in the suit and the applicable statutory provisions.

17. In the present case, the suit is one for specific performance and the documents in question constitute the basis of the claim made by the plaintiffs. The objection to their non-registration, therefore, has to be examined in the light of the specific statutory exception contained in Section 49 of the Registration Act, 1908.

18. The proviso to Section 49 of the Registration Act, 1908 expressly provides an exception to the general consequence of non-registration. An unregistered document affecting immovable property and required to be registered may be received as evidence of a contract in a suit for specific performance. The Hon'ble Supreme Court in ***R. Hemalatha Vs. Kashthuri***, Civil Appeal No.2535 of 2023, decided on 10.04.2023 **[(2023) 10 SCC 725]**, has reiterated this legal position and held that an unregistered Agreement to Sell is admissible in evidence in a suit for specific performance, subject to the statutory exception contained in Section 17(1A) of the Registration Act.

19. The decision in *R. Hemalatha (supra)* is of particular relevance because therein also the controversy arose in a suit for specific performance where the defendant objected to the admissibility of an unregistered Agreement to Sell and sought

consideration of the objection as a preliminary issue. The Hon'ble Supreme Court, while examining the effect of the proviso to Section 49, affirmed that the unregistered Agreement to Sell could be received in evidence in a suit for specific performance. Thus, in the present case, the mere fact that the agreements relied upon by the plaintiffs are unregistered cannot, by itself, furnish a ground for excluding them from consideration in the suit for specific performance.

20. The question of insufficiency of stamp duty stands on a different footing. As noticed hereinabove, the document in question is not duly stamped. An instrument which is insufficiently stamped cannot be received in evidence in its existing form; however, the defect is not one which renders the document permanently inadmissible. The statutory scheme provides for determination and recovery of the deficient stamp duty and penalty, whereafter the document may be dealt with in accordance with law.

21. This Court itself, in the case of ***Manoj Kumar & Ors. Vs. Nathmal Sharma & Ors. [S.B. Civil Writ Petition No.10748/2026 decided on 21.07.2026]***, has considered the precise distinction between an unregistered Agreement to Sell and an insufficiently stamped Agreement to Sell. In paragraphs 4 to 6 of the said judgment, this Court, after considering Section 49 of the Registration Act, 1908 and Section 39 of the Rajasthan Stamp Act, 1998, held that an unregistered Agreement to Sell cannot be excluded from consideration merely on the ground of non-

registration in a suit for specific performance, whereas an insufficiently stamped instrument has to be dealt with in accordance with the statutory requirement regarding payment of the deficient stamp duty and penalty before it is received in evidence or exhibited, if otherwise admissible in law. For ready reference, para No.4 to 6 of the above judgment are quoted hereinbelow :-

> *"4. The principal question which falls for consideration is whether an unregistered and allegedly insufficiently stamped agreement to sell, forming the basis of a suit for specific performance, can be tendered in evidence without first complying with the mandate of the Registration Act, 1908 (hereinafter to be referred as "the Act of 1908") and the Act of 1998.*
>
> *4.1 Before adverting, it is apposite to reproduce the relevant provision of the Act of 1908. For ready reference, Section 49 of the Act of 1908 is reproduced herein below:-*
>
> > *"**49. Effect of non-registration of documents required to be registered.**—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—*
> >
> > *(a) affect any immovable property comprised therein, or*
> >
> > *(b) confer any power to adopt, or*
> >
> > *(c) be received as evidence of any transaction affecting such property or conferring such power,*
> >
> > *unless it has been registered:*

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.]

4.2 Insofar as the objection regarding non-registration is concerned, Section 49 of the Act of 1908 provides that a document which is compulsorily registrable under Section 17 thereof cannot affect the immovable property comprised therein nor can it be received in evidence of any transaction affecting such property unless it has been registered. However, the proviso appended to Section 49 of the Act of 1908 carves out a well-recognised exception by permitting an unregistered document to be received in evidence as proof of a contract in a suit for specific performance or for any collateral purpose which is not required by law to be effected through a registered instrument. Thus, in a suit founded upon an agreement to sell, the mere fact that the agreement is unregistered would not, by itself, render the document wholly inadmissible in evidence, provided that it is sought to be relied upon only for the limited purpose contemplated under the proviso to Section 49 of the Act of 1908.

5. As far as the question of Section 39 of the Act of 1998 is concerned, it unequivocally provides that no instrument chargeable with stamp duty under the Act shall be admitted in evidence, acted upon, registered or authenticated by any Court or authority competent to receive evidence unless such instrument is duly *stamped. For the ease of reference, Section 39 of the Act of 1998 is reproduced herein below:-*

> *"**39. Instruments not duly stamped inadmissible in evidence, etc.** –*
>
> *No instrument chargeable with duty under this Act shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:*
>
> *Provided that,-*
>
> *(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of, -*
>
> *(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, and*
>
> *[(ii) a penalty at the rate of two percent of the amount of the deficient duty per month or part thereof for the period during which the instrument remained insufficiently stamped or twenty five percent of the deficient stamp duty, whichever is higher, but such penalty shall not exceed to two times of the deficient stamp duty.]*
>
> *(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp; the contract of agreement shall be deemed to be duly stamped.*
>
> *(c) nothing herein contained shall prevent the admission of any instrument as evidence in any proceeding in a criminal court, other than a proceedings under chapter IX or Part D of*

Chapter X of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

(d) nothing herein contained shall prevent the admission of any instrument in any court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 36 or any other provision of this Act.

(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral account of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid.

(f) nothing herein contained shall prevent the admission of any instrument in evidence in any court when stamp duty on such instrument has already been paid in advance in the form of a consolidated lump sum.

(g) nothing herein contained shall prevent the admission of any instrument in any court when such document has been executed by or on behalf of the Government or where it bears the Certificate of the Collector as provided by section 36 or any other provision of this Act."

5.1 The legislative mandate embodied in the provision leaves no manner of doubt that an instrument which is not duly stamped cannot be received in evidence in its existing form. The proviso appended to Section 39, however, carves out an exception to the aforesaid embargo by providing that an instrument which is insufficiently stamped does not become altogether inadmissible. The defect is curable upon payment of the requisite stamp duty or the deficient portion thereof together with the penalty as contemplated under the statute. Thus, the legislative intent is not to exclude *such document from consideration permanently, but to ensure compliance with the fiscal requirement prescribed under the Act before the document is admitted in evidence or acted upon by the Court. Viewed from the aforesaid perspective, if the agreement sought to be tendered in evidence is found to be insufficiently stamped, the learned trial Court shall ensure compliance with the mandate of Section 39 of the Act of 1998 before the document is received in evidence or exhibited, if otherwise admissible in law.*

6. In view of the aforesaid legal position, this Court is of the considered opinion that though the agreement to sell cannot be excluded from consideration merely on the ground of non-registration in a suit for specific performance, its admissibility in evidence shall nevertheless remain subject to strict compliance with the provisions of Section 39 of the Act of 1998, if it is found to be insufficiently stamped."

22. The principle emerging from the aforesaid statutory provisions and the judgments referred to hereinabove is, therefore, clear. Non-registration of an Agreement to Sell, by itself, does not render the agreement inadmissible as evidence of the contract in a suit for specific performance by virtue of the proviso to Section 49 of the Registration Act. An objection regarding insufficiency of stamp duty, on the other hand, has to be dealt with in accordance with the applicable Stamp Act and the document cannot be received in evidence in its insufficiently stamped form until the statutory requirements are complied with.

23. Coming to the facts of the present case, Issue No.4 was framed on 10.07.2009. The objection regarding the document was thereafter raised and, on 10.10.2011, the learned trial Court

directed that arguments on Issue No.4 be heard first. The matter thereafter remained pending for several years. Numerous dates were granted for arguments on the said issue, the suit was transferred from one Court to another, and even after the matter came before the present Court, the issue continued to remain pending. Ultimately, hearing on Issue No.4 commenced on 18.01.2017 and the impugned order came to be passed on 17.08.2017.

24. The prolonged history of the proceedings assumes significance. The purpose of Order XIV Rule 2 CPC is not to permit a preliminary issue to become a source of interminable interlocutory proceedings. At the same time, the provision cannot be understood to mean that a statutory objection relating to admissibility of a document, once raised and capable of being dealt with in accordance with a prescribed statutory mechanism, should remain pending for years without the Court taking the appropriate procedural step.

25. Insofar as the learned trial Court has observed that Issue No.4 involves mixed questions of fact and law and, therefore, cannot be decided as a preliminary issue, the said view, to that extent, is consistent with the scheme of Order XIV Rule 2 CPC. However, that conclusion does not conclude the matter. The learned trial Court was still required to deal with the admitted statutory objection regarding insufficiency of stamp duty in the manner prescribed by law. The pendency of the controversy for

several years could not justify keeping the document and the objection thereto in a state of procedural limbo.

26. In the present case, so far as insufficiency of stamp duty is concerned, the appropriate course is not to embark upon an adjudication of the issue by treating it as a preliminary issue, but to follow the statutory procedure prescribed for an insufficiently stamped instrument. Once the competent authority determines the deficit stamp duty and the same is paid by the concerned party, the trial can proceed in accordance with law.

27. Accordingly, the learned trial Court shall forthwith send the document in question to the Collector-cum-DIG, Stamps, who shall impound the document and determine the deficit stamp duty payable thereon in accordance with law within twenty days from the date of receipt of the document.

28. Upon such determination, the concerned party shall deposit/ pay the deficit stamp duty and penalty, if any, as may be determined by the competent authority in accordance with law. Upon compliance with the statutory requirement, the learned trial Court shall proceed further with the trial in accordance with law. Needless to observe, the question of final admissibility and evidentiary effect of the document shall remain subject to the applicable statutory provisions and the evidence on record.

29. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India has also been invoked. The jurisdiction is undoubtedly supervisory and is not intended to be exercised as a regular appellate jurisdiction. Nevertheless, the very object of the

jurisdiction is to keep the subordinate Courts within the bounds of their authority and to examine the legality and correctness of the orders passed by them where circumstances so warrant. In the present case, this Court is not interfering merely because it may take a view different from the learned trial Court on a question of fact. The impugned order has been examined in the context of the statutory provisions governing preliminary issues, the legal position concerning an unregistered Agreement to Sell in a suit for specific performance, the admitted insufficiency of stamp duty and, most importantly, the extraordinary period for which the controversy has remained pending.

30. The present exercise of jurisdiction under Article 227 is, therefore, confined to examining the legality and correctness of the course adopted by the learned trial Court and does not involve substitution of this Court's appreciation of evidence for that of the trial Court.

31. There is yet another aspect which cannot be lost sight of. The original suit is pending since the year 2014. The proceedings relating to Issue No.4 themselves have continued for several years, commencing with the framing of the issue in 2009 and continuing through repeated dates, transfers and hearings. The litigants cannot be subjected to further indefinite delay on account of an interlocutory controversy which can now be dealt with by following the statutory procedure.

32. Consequently, while this Court does not consider it necessary to direct the learned trial Court to treat Issue No.4 as a

preliminary issue contrary to the scheme of Order XIV Rule 2 CPC, appropriate directions are necessary to ensure that the statutory objection regarding insufficiency of stamp duty is dealt with forthwith and that the suit thereafter proceeds to trial without further avoidable delay.

33. The learned trial Court shall, therefore, proceed with the trial after completion of the aforesaid exercise and shall make every endeavour to finally decide the original suit within a period of nine months from the date of receipt of a certified copy of this order.

34. The aforesaid time limit has been fixed having regard to the fact that the suit has already remained pending since 2014 and the controversy relating to Issue No.4 has itself remained pending for an exceptionally long period. The learned trial Court shall avoid unnecessary adjournments and shall endeavour to adhere to the aforesaid schedule. At the same time, the trial shall be conducted strictly in accordance with law and the parties shall be afforded due opportunity as required by the procedural law.

35. It is also informed that respondent No.4-plaintiff, Manmohan, has expired. If his legal representatives desire to come on record, they shall be at liberty to file an appropriate application before the learned trial Court for setting aside the abatement, if any, and for substitution/bringing the legal representatives on record. In the event any such application is filed, the learned trial Court shall consider and decide the same in accordance with law and expeditiously, without permitting the pendency of such application to unnecessarily impede the progress of the suit.

36. In view of the discussion made hereinabove, the writ petition is disposed of with the aforesaid directions. The impugned order dated 17.08.2017 passed by the learned Additional District Judge No.4, Jodhpur Metropolitan in Civil Original Suit No.190/2014 is modified to the aforesaid extent. The learned trial Court shall ensure compliance with the directions contained hereinabove.

37. It is made clear that this Court has not expressed any opinion on the merits of the claims and counter-claims of the parties in the original suit. The learned trial Court shall decide the suit independently, in accordance with law and on the basis of the material and evidence available before it.

38. No order as to costs.

(FARJAND ALI),J

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