

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

S.B. Civil Writ Petition No. 15556/2022

Hanuman Sahai @ Hanuman Sharma S/o Late Ramu @ Ramlal Sharma, Aged About 75 Years, R/o 262, Taigore Nagar, Jaipur.

-----Petitioner/Plaintiff

Versus

1. M/s Jhankar Motals Pvt. Ltd., Through Director Shri Niranjana Lal Data, R/o C-92, Chetanya Marg, C-Scheme, Jaipur.
2. Shri Niranjana Lal Data, Through Director M/s Jhankar Motals Pvt. Ltd. R/o C-92, Chetanya Marg, C-Scheme, Jaipur. (Since Deceased During Pendency Of Plaint).
- 2/1. Shri Dayakishan Data S/o Late Shri Niranjana Lal Data, Through Director, M/s Jhankar Motals Pvt. Ltd. R/o C-92, Chetanya Marg, C-Scheme, Jaipur.
3. Ramavtar Yadav, Director M/s Jhankar Motals Pvt. Ltd. R/o C-92, Chetanya Marg, C-Scheme, Jaipur.
4. Ladu Ram S/o Late Ram Kumar, (Since Deceased During Pendency Of Plaint On 03.10.2010) Through His Legal Representatives
 - 4/1. Smt. Kamla W/o Late Shri Ladu Ram,
 - 4/2. Shri Madan Lal S/o Late Shri Ladu Ram,
 - 4/3. Smt. Anita D/o Late Shri Ladu,
 - 4/4. Smt. Mangli D/o Late Shri Ladu Ram,
 - 4/5. Bachchhi Devi W/o Late Shri Bhagwanram Daughter In Law Of Late Shri Ladu Ram,
 - 4/6. Sitaram S/o Late Shri Bhagwanram Grandson Of Late Shri Ladu Ram,
 - 4/7. Ram Lal S/o Late Shri Bhagwanram Grandson Of Late Shri Ladu Ram,
 - 4/8. Smt. Meera W/o Late Shri Sharwan Lal Grandson Of Late Shri Ladu Ram,
 - 4/9. Pappu S/o Late Shri Sharwan Lal Grandson Of Late Shri Ladu Ram,All are R/o Yadav Bhawan, Hanuman Vatika, Phase-II, Heerapura, Chitrakoot Marg, Ajmer Road, Jaipur.
5. Jaipur Development Authority, Through Commissioner,

Jawahar Lal Nehru Marg, Jaipur.

6. Tehsildar, Jaipur Tehsil Office, Jaipur.
7. Chairman And Managing Director, Jaipur Vidhyut Vitran Nigam Ltd., Jaipur.

-----Respondents/Defendants

For Petitioner(s) : Mr. Manoj Kumar Bhardwaj
For Respondent(s) :

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

Order

31/10/2022

This writ petition under Article 227 of the Constitution of India assails the order dated 07.07.2022 passed by the learned Additional District Judge No.1, Jaipur Metropolitan II in Civil Suit No.194/2012 whereby, while dismissing the application filed by the respondent No.1/defendant under Order 7 Rule 11 read with Section 151 CPC, a direction has been issued to decide the issues no.7 & 8 as preliminary issues.

The relevant facts in brief are that the petitioner/plaintiff filed a suit against the respondents/defendants for declaration, cancellation of sale deed dated 28.02.2003 and permanent injunction. During its pendency, the defendant No.1 filed an application under Order 7 Rule 11 CPC read with Section 151 CPC seeking rejection of the plaint. Vide order impugned dated 07.07.2022, the learned trial Court, while dismissing the application, directed the issues no.7 & 8 to be decided as preliminary issues.

Learned counsel for the petitioner, inviting attention of this Court towards the provisions of Order 14 Rule 2 CPC, would

submit that only pure questions of law can be decided as preliminary issue and in the teeth of observations of the learned trial Court itself that the issues no.7 & 8 are mixed questions of law and facts, the same could not have been directed to be decided as preliminary issues.

Heard. Considered.

The issues no.7 & 8 read as under:-

"Issue No.7- Whether the suit is liable to be dismissed being barred by limitation?

Issue No.8- Whether the suit is liable to be dismissed being hit by the principle of res judicata?"

Burden of proof of both the issues is upon the defendants No.1 & 2. A perusal of both the issues reveals that if these issues are decided in favour of the defendants, decision of other issues may not be warranted. Although, generally mixed questions of law and facts are decided as preliminary issues; but, if maintainability of the suit hinges upon any issue(s), the same can be decided as preliminary issue. Even otherwise also, learned counsel for the petitioner could not satisfy this Court that the order impugned would cause any prejudice to him. In view of the aforesaid, in the considered opinion of this Court, the learned trial Court did not err in directing the issues no.7 & 8 to be decided as preliminary issue.

Accordingly, the writ petition is dismissed being devoid of merit.

(MAHENDAR KUMAR GOYAL),J