

S.B. Civil First Appeal No. 221/2026

----Appellant

- Respondents

For Appellant(s) : Mr. D.K. Godara

For Respondent(s) : Mr. H.R. Soni
Mr. Harish Joshi through VC
Mr. Tripti Soni
Mr. Narootam Soni
Mr. Jitendra Soni

Order

DATE OF CONCLUSION OF ARGUMENTS	09/07/2026
DATE ON WHICH ORDER IS RESERVED	09/07/2026
FULL ORDER OR OPERATIVE PART	Full Order
DATE OF PRONOUNCEMENT	20/08/2026

**BY THE COURT:-**

1. The present Civil First Appeal under Section 96 of the Code of Civil Procedure, 1908, is directed against the judgment and decree dated 10.02.2026 passed by the learned Additional District Judge, Pokhran, in Civil Original Case No.31/2025, whereby the suit instituted by the appellant-plaintiff seeking declaration of his rights, permanent injunction and cancellation of the registered sale deed dated 17.04.2025, with a further declaration that the said instrument is null, void, ineffective and inoperative qua his alleged share, came to be dismissed on allowing the application preferred by respondent No.7 under Order VII Rule 11 CPC.

2. Brief facts of the case are that the dispute relates to agricultural land measuring 75 bighas of unirrigated second-class land comprised in Khasra No.294/506, situated at Village Jaimla, Patwar Area Jaimla, Land Records Inspector Area Sankda, Tehsil Pokhran, District Jaisalmer. According to the appellant, the land was originally allotted to his grandfather, late Chutra Ram S/o Labharam, under Section 101 of the Rajasthan Land Revenue Act, 1956, on account of his being landless and for agricultural purposes. The appellant claims that the property retained the character of ancestral/coparcenary property and that, being the son of respondent No.1, he acquired an undivided 1/9th share therein by birth.

2.1. It is further the appellant's case that respondent Nos.1 to 3, in collusion with respondent No.4, executed the registered sale deed dated 17.04.2025 without recognising his alleged



coparcenary interest or obtaining his consent. The property was thereafter allegedly alienated in favour of respondent Nos.5 and 7 by sale deeds dated 26.09.2025 and 29.09.2025. Claiming that such alienations adversely affected his alleged share, the appellant instituted the suit seeking declaration, cancellation of the sale deeds and permanent injunction.

2.2. During the pendency of the suit, respondent No.7 was impleaded under Order I Rule 10 CPC and thereafter preferred an application under Order VII Rule 11 CPC, contending, inter alia, that the suit was not maintainable before the civil court in the absence of any declaration from the competent revenue court recognising the appellant's alleged khatedari rights. The learned trial Court accepted the objection and, vide judgment and decree dated 10.02.2026, dismissed the suit. Hence, the present appeal.

3. Learned counsel for the appellant contended that the learned trial Court failed to appreciate the true character of the suit property. According to him, although the land was originally allotted to late Chutra Ram, the allotment was made for the benefit and maintenance of the family and, upon his death, the property devolved upon his legal heirs as ancestral/coparcenary property. It was submitted that the appellant, being the legitimate son of respondent No.1, acquired an interest therein by birth and was consequently entitled to challenge the alienations made without his consent. It was further argued that the mutation of the land in the names of Chutra Ram's three sons could not extinguish the appellant's alleged pre-existing rights and that the questions



concerning the nature of the property, the appellant's coparcenary interest and the validity of the sale deeds required adjudication upon evidence and could not have been determined at the threshold under Order VII Rule 11 CPC.

3.1. Learned counsel for the appellant accordingly prayed that the appeal be allowed, the impugned judgment and decree be set aside and the suit be restored for adjudication on merits.

4. Per contra, learned counsel for the respondents supported the impugned judgment. It was submitted that the appellant's claim of coparcenary rights rests merely upon his relationship with Chutra Ram and is unsupported by any specific pleading that the land was HUF property or that Chutra Ram held it as karta of a joint Hindu family. It was contended that Chutra Ram, the original allottee, died intestate on 24.04.2004 and his three sons, being his Class-I heirs, succeeded to the property in accordance with the Hindu Succession Act, 1956, whereafter their respective shares were duly recorded in the revenue records. Mere descent from the original allottee, according to learned counsel, does not confer upon the appellant a coparcenary right in the property.

4.1. It was further submitted that the appellant has neither obtained nor sought any declaration from the competent revenue court regarding his alleged khatedari right or share in the agricultural land. Reliance was placed upon ***Pyarelal Vs. Shubhendra Pilonia & Ors., (2019) 3 SCC 692***, to contend that the foundational khatedari right must first be determined by the competent revenue court before any consequential relief



concerning alienation of the agricultural land can be sought before the civil court. It was, accordingly, prayed that the appeal be dismissed and the judgment and decree under challenge be affirmed.

5. I have heard learned counsel for the parties and carefully perused the pleadings, the material available on record and the impugned judgment and decree.

6. The principal question which falls for consideration is whether, on the pleadings as they stand, the appellant had any existing coparcenary or khatedari right in the suit property so as to maintain a civil action for cancellation of the impugned sale deeds.

6.1. At the outset, the nature and origin of the property require consideration. The appellant himself traces the title to the allotment made in favour of his grandfather, Chutra Ram. However, the plaint does not contain any specific averment that the allotment was made in favour of a Hindu Undivided Family or that Chutra Ram held the land as karta or on behalf of a joint Hindu family. There is also no pleading disclosing the existence of an HUF, its constitution or the manner in which the suit property allegedly formed part of such joint family estate.

6.2. This omission is material. A claim of coparcenary right is founded upon the existence of coparcenary property, and such a claim cannot be sustained merely from the genealogical relationship between the parties. The fact that the property originally belonged to a grandfather does not, by itself, establish



that the property continued to retain the character of HUF or coparcenary property in the hands of his descendants. The source of title and the mode of devolution have to be examined to determine whether any right by birth existed.

6.3. The admitted factual position is that Chutra Ram died intestate on 24.04.2004. Upon his death, succession opened and his estate devolved upon his Class-I heirs in accordance with the Hindu Succession Act, 1956. His three sons namely Khetaram, Ramaram and Lachchuram consequently succeeded to the property in equal shares, and one-third share came to be recorded in the name of each of them, including the appellant's father. The mutation in the revenue records was thus consequential upon the succession which had already taken place by operation of law.

6.4. The significance of this devolution cannot be overlooked. The appellant's father succeeded to his one-third share as a Class-I heir of Chutra Ram. The appellant, being the son of one of the successors, was not himself a successor to Chutra Ram in preference to his father. His alleged 1/9th share is founded upon the proposition that the property inherited by his father continued to constitute coparcenary property in which the appellant acquired an interest by birth. That proposition, however, finds no foundation in the pleadings.

6.5. The fact that the appellant was a minor when Chutra Ram died does not alter the legal consequence of the succession which took place on 24.04.2004. Minority neither changes the class of heirs nor postpones the vesting of the estate in the heirs entitled



thereto. The one-third share inherited by the appellant's father accordingly vested in him under the statutory scheme. The subsequent attainment of majority by the appellant could not, by itself, create a right which had not accrued to him at the time of such devolution.

6.6. The learned trial Court has considered this very aspect and noticed that the plaint contains no assertion that the disputed land was ever HUF property. The trial Court further recorded that the plaintiff himself pleaded that the land had been allotted to his grandfather, Chutra Ram, on account of his being landless and that, after his death, the land was recorded in the names of his three sons in equal shares. It was accordingly observed that, if the plaintiff intended to claim a right as a coparcener, he was required to establish that the property was HUF property. The reasoning of the learned trial Court, on this aspect, is consistent with the pleadings and the manner in which succession took place.

6.7. The legal position may now be examined with reference to the Hindu Succession Act. Section 4 of the Act gives overriding effect to the statutory provisions contained therein over any inconsistent text, rule, interpretation, custom or usage of Hindu law. The object is to ensure that, once Parliament has codified the law governing a particular aspect of succession, the rights of the parties are determined in accordance with that statutory scheme rather than by resort to an inconsistent pre-existing rule of Hindu law.



6.8. Section 4, however, is not itself a provision which determines the character of the property as self-acquired, ancestral, joint family or coparcenary property. Its role is essentially to give overriding effect to the provisions of the Hindu Succession Act in matters which are governed by the Act and to exclude the operation of any inconsistent rule, interpretation, custom or usage of Hindu law. The character of the property has, therefore, to be determined independently with reference to its source of acquisition, the nature of the right held by the predecessor and the manner in which such right devolved upon his successors. In the present case, the admitted foundation of the appellant's title is the allotment of the land in favour of his grandfather, Chutra Ram. There is no specific averment in the plaint that the allotment was made in favour of a Hindu Undivided Family or that Chutra Ram held the land as its karta. In the absence of such foundational facts, the property cannot be presumed to have been HUF or coparcenary property merely because the appellant is a descendant of the original allottee. Upon Chutra Ram's intestate death, therefore, the devolution of his estate has necessarily to be examined in the light of the statutory scheme contained in the Hindu Succession Act, particularly Section 8 read with the Schedule. Section 4 operates at the level of giving primacy to that statutory scheme, whereas Section 8 determines the persons upon whom the estate devolves. Thus, Section 4 cannot be relied upon in isolation either to create a coparcenary right in favour of the appellant or to characterise the property as ancestral; rather, the nature of the right acquired by the successors has to be





ascertained from the statutory mode of succession and the absence or otherwise of any pre-existing HUF/coparcenary estate.

6.9. Section 8 prescribes the general rules of succession in the case of a Hindu male dying intestate. Once succession opened upon the death of Chutra Ram, his estate devolved upon his Class-I heirs in accordance with that provision and the Schedule. The three sons accordingly succeeded to their respective shares. The appellant cannot displace this statutory devolution merely by invoking the general expression "ancestral property" or by asserting that, as a grandson, he acquired a right by birth.

6.10. The distinction between property inherited by a person under Section 8 and property in which a person is already a coparcener is of considerable importance. Where the property devolves upon a son under Section 8, he succeeds to it in his individual capacity unless some independent legal foundation exists for treating the property as part of a subsisting joint family estate. The mere fact that the property came to him from his father does not, in itself, confer a birthright upon his son.

6.11. The aforesaid distinction has been authoritatively explained by the Hon'ble Supreme Court in ***Uttam Vs. Saubhag Singh & Ors. (2016) 160 AIC 1***, wherein the interplay of Sections 4, 6, 8 and 19 of the Hindu Succession Act was considered. The Supreme Court examined the effect of succession under Section 8 upon the character of the property and held, in substance, that where the property of a Hindu male devolves upon his Class-I heirs in accordance with Section 8, such devolution brings about



succession in accordance with the statutory scheme and the property does not, merely by reason of the relationship between the predecessor and successor, continue to retain the character of coparcenary property so as to confer an independent right by birth upon the next generation. The Court further recognised that once succession has taken place under Section 8, the heirs succeed in their respective individual capacities and the property so devolved cannot be treated as joint family property merely on the basis of the earlier relationship of the parties. The principle assumes particular relevance in the present case because Chutra Ram died intestate and his three sons succeeded to his estate in equal shares. The appellant is not an heir who succeeded directly to the estate of Chutra Ram; rather, he is the son of one of the heirs who inherited a one-third share under Section 8. Consequently, the appellant cannot claim that a coparcenary interest accrued in his favour by birth in the share which had already devolved upon his father under the statutory scheme. In the absence of a specific plea and material establishing that the property was held as HUF/coparcenary property independently of such statutory succession, the appellant's mere relationship as grandson of Chutra Ram does not confer upon him a present right to seek partition or to challenge an alienation made by his father on the footing of an alleged pre-existing coparcenary interest.

6.12. The aforesaid principle squarely applies to the facts of the present case. Chutra Ram died intestate, whereupon his three sons, being his Class-I heirs, succeeded to his estate in equal shares and the appellant's father accordingly acquired a one-third





share by statutory succession. The property so inherited by the appellant's father devolved upon him in his individual capacity and, consequently, acquired the character of his self-acquired property. In the absence of any specific pleading or material establishing that the property, either at the time of its acquisition or thereafter, formed part of a pre-existing Hindu Undivided Family or constituted a subsisting coparcenary estate, the property inherited by the appellant's father cannot be treated as joint Hindu family property merely because it had originally belonged to his father, Chutra Ram. The appellant, therefore, merely by virtue of being the son of one of the successors, could not claim an independent 1/9th coparcenary share therein by birth. For the aforesaid reasons, the appellant had no legally enforceable right to seek partition of the said property during the lifetime of his father.

6.13. Applying this settled principle to the present case, if the appellant intended to assert that the suit property was HUF/coparcenary property and that his father held the same not in his individual capacity but as a member or karta of a joint Hindu family, it was incumbent upon him to lay the necessary factual foundation in the plaint itself. He was required to plead the existence of the alleged HUF, the character of the property as joint family/coparcenary property, the circumstances in which Chutra Ram allegedly held the property for the joint family, and the legal basis on which the appellant claimed to have acquired a right therein by birth. No such foundational case has been specifically pleaded.





6.14. In the absence of such pleading, the appellant cannot seek to overcome the deficiency by relying upon oral or documentary evidence to establish, for the first time, that the property was HUF/coparcenary property. Such evidence, even if available, could not legitimately furnish a new foundation for the claim. The appellant was required first to plead the material facts constituting his alleged coparcenary right and thereafter to prove those pleaded facts by admissible evidence. The sequence cannot be reversed. Proof was required to support the pleading; proof could not be utilised to create the pleading.

6.15. The omission is particularly material in the present case because the entire claim of the appellant to an alleged 1/9th share and his consequent right to seek partition rests upon the assertion that the property in the hands of his father was joint Hindu family/coparcenary property. Once the property inherited by the father under the statutory scheme is held to be his self-acquired property, and no foundational pleading is forthcoming to demonstrate that it had nevertheless become or continued to be HUF/coparcenary property, the appellant cannot derive a right by birth merely from the relationship of father and son. Consequently, during the lifetime of his father, the appellant had no subsisting coparcenary right in the property so as to maintain a suit for partition.

6.16. Thus, the deficiency in the appellant's case is not merely an absence of sufficient evidence; it is anterior to the question of evidence itself. The necessary factual foundation for the alleged



coparcenary right was never laid in the plaint. In such circumstances, the appellant cannot be permitted to introduce, through evidence, a case which was not set up in the first place. The pleadings having failed to disclose the existence of a Hindu Undivided Family or the coparcenary character of the property, the alleged 1/9th share could neither be founded upon the statutory succession which operated in favour of the appellant's father nor be established by evidence travelling beyond the pleadings. The claim for partition, therefore, was rightly found to be legally unsustainable during the lifetime of the appellant's father.

6.17. For the foregoing reasons, the appellant had no subsisting coparcenary or proprietary right in the one-third share inherited by his father so as to maintain a suit for partition thereof during the lifetime of his father. The mere fact that the appellant is the son of the successor cannot, in the absence of an established coparcenary estate, confer upon him a present right to seek partition of his father's self-acquired property.

7. Further, the appellant's minority at the time of Chutra Ram's death does not make the position any different. Nor does his subsequent attainment of majority confer upon him a right to seek partition during the lifetime of his father. The question is not one of limitation or mere age but of the very existence of the substantive right asserted by the appellant. Since the property devolved upon his father under Section 8 and no subsisting coparcenary estate has been pleaded or established, the appellant cannot claim a present proprietary interest therein by birth.



7.2. There is, however, another and equally significant aspect relating to the maintainability of the suit. The appellant challenges the sale deeds on the footing that respondent Nos.1 to 3 had alienated a property in which he possessed an independent khatedari/coparcenary share. The existence of such share is thus the foundation of the consequential relief of cancellation. Unless the appellant first establishes his own legal entitlement in the agricultural land, the question whether the subsequent alienations affect that entitlement cannot effectively arise.

7.3. In **Pyarelal** (*Surpa*) the Hon'ble Supreme Court considered the question of determination of khatedari rights in agricultural land and held that where the plaintiff's entitlement to khatedari rights itself falls for determination before the competent revenue court, consequential relief concerning the alienation of such land cannot be obtained from the civil court without the foundational right first being determined by the competent forum.

7.4. The principle laid down in **Pyarelal** is attracted to the present case. The appellant has not obtained any declaration from the competent revenue court recognising him as a khatedar or declaring an independent share in the suit land. His alleged khatedari right is itself unestablished. The civil court cannot assume the existence of such right merely to examine the validity of the sale deeds executed by the recorded khatedars.

7.5. Thus, the challenge to the impugned sale deeds is essentially consequential upon the appellant first establishing his substantive and legally enforceable right in the agricultural land. Under



Section 88 of the Rajasthan Tenancy Act, 1955, a person claiming a right or interest as a khatedar tenant is required to seek an appropriate declaration of such right before the competent revenue court. The appellant, however, has not obtained any such declaration in his favour. Furthermore, by virtue of Section 207 of the Rajasthan Tenancy Act, the jurisdiction to entertain and adjudicate upon suits and proceedings relating to matters enumerated in the Third Schedule is vested exclusively in the revenue courts, and the jurisdiction of the civil court in respect of such matters stands correspondingly excluded. The declaration of the appellant's alleged khatedari right being the foundational relief upon which his consequential claim for cancellation of the sale deeds rests, the civil court could not assume jurisdiction over the matter merely because the appellant has couched his claim in the form of a suit for declaration, cancellation and injunction. Until the foundational khatedari right is determined by the competent revenue court, the consequential relief sought before the civil court cannot be sustained.

7.6. The appellant's case, therefore, fails on both the substantive as well as the jurisdictional plane. First, the pleadings do not disclose the foundational facts necessary to establish that the suit property constituted HUF/coparcenary property in which the appellant acquired any right by birth. In the absence of such a legally sustainable foundation, the appellant could not claim an independent 1/9th coparcenary share or maintain a suit for partition against his father during his lifetime. Secondly, the appellant has neither obtained nor sought the requisite declaration





of his alleged khatedari entitlement from the competent revenue forum. Such declaration being within the exclusive domain of the revenue court under the statutory scheme of the Rajasthan Tenancy Act, the civil court cannot be invoked as a substitute forum for determining the very right upon which the appellant's consequential challenge to the sale deeds is founded. The subsequent alienations cannot, in law, furnish a means to circumvent the statutory forum or confer jurisdiction upon the civil court where none otherwise exists. Unless and until the appellant's alleged right in the agricultural land is duly declared by the competent revenue court in accordance with Section 88 of the Rajasthan Tenancy Act, the present civil suit seeking partition and consequential cancellation of the sale deeds cannot be said to be maintainable in law.

7.8. In view of the aforesaid discussion, this Court finds that the learned trial Court committed no error in allowing the application under Order VII Rule 11 CPC. The conclusion reached by the learned trial Court is consistent with the pleadings, the statutory scheme governing succession and the law laid down by the Hon'ble Supreme Court. No perversity, jurisdictional error or patent illegality has been demonstrated warranting interference in the present first appeal.

8. Consequently, the present appeal is devoid of merit and is liable to be dismissed. The judgment and decree dated 10.02.2026 passed by the learned Additional District Judge, Pokhran, in Civil Original Case No.31/2025, is hereby affirmed.



8.1. The appeal is, accordingly, dismissed. Let record be transmitted to the trial court forthwith. The appellate decree be drawn accordingly. The stay petition and all pending applications, if any, shall stand disposed of.

(FARJAND ALI),J

9/Mamta Tak

