HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 17412/2026
CNR: RJHC020791602026 | URN: CW / 36447U / 2026

Hanuman Sahay Sharma S/o Late Shri Harsahay, R/o Village Bhanpurkalan, Teshil Jamwaramgarh, District Jaipur.

----Petitioner

Versus

1. Lalita Devi W/o Kaluram, R/o Village Bhanpurkalan, Tehsil Jamwaramgarh, District Jaipur.
2. State Of Rajasthan, Through Tehsildar, Jamwaramgarh, District Jaipur.

----Respondents

Connected With

S.B. Civil Writ Petition No. 16588/2026
CNR: RJHC020791652026 | URN: CW / 34827U / 2026

Hanuman Sahay Sharma S/o Late Shri Harsahay, R/o Village Bhanpurkalan, Teshil Jamwaramgarh, District Jaipur.

----Petitioner

Versus

1. Lalita Devi W/o Kaluram, R/o Village Bhanpurkalan, Teshil Jamwaramgarh, District Jaipur.
2. State Of Rajasthan, Through Tehsildar, Jamwaramgarh, District Jaipur.

----Respondents

For Petitioner(s) : Mr. Mamoon Khalid, Adv.
For Respondent(s) :

HON'BLE MR. JUSTICE ANAND SHARMA
Judgment

28/10/2026

1. Both the aforesaid writ petitions have arisen out of orders passed by the Revenue Appellate Authority on applications under Order 26 Rule 9 CPC filed by the petitioner in respective appeals, which have been rejected by the Appellate Authority and

subsequently, even the revision petitions filed by the petitioner have also been dismissed by the Board of Revenue.

2. In view of similar questions involved, both the petitions were heard together and are being decided by this common order.

3. For the sake of convenience, facts stated in S.B. Civil Writ Petition No.17412/2026 are being taken into consideration.

4. It is stated that respondent-plaintiff instituted a suit for partition under Section 53 of the Rajasthan Tenancy Act, 1955. In the aforesaid suit, the trial Court proceeded *ex-parte* against the petitioner and passed preliminary decree on 13.02.2024. The petitioner filed appeal against preliminary decree before the Court of Revenue Appellate Authority. As per the petitioner, since during pendency of the appeal, the respondents were raising construction, therefore, application under Order 26 Rule 9 CPC for appointment of Commissioner was filed so as to ascertain the site position. However, the said application was dismissed vide order dated 09.07.2025 by the Revenue Appellate Authority. Feeling dissatisfied, the petitioner filed revision petition before the trial Court, which has also been dismissed vide order dated 22.07.2026.

5. Learned counsel for the petitioner submits that Revenue Appellate Authority as well as Board of Revenue have utterly failed to appreciate the scope and extent of provisions under Order 26 Rule 9 CPC and the application has been dismissed while holding that appointment of Commissioner at the stage would amount to creation of additional evidence at appellate stage, which is not permissible under law. Learned counsel submits that as the preliminary decree was an *ex-parte* decree

and was not in accordance with the partition that had already taken place between the parties, therefore, in order to ascertain site position and the respective possessions of the parties to the litigation, it was necessary to appoint Commissioner and therefore, the application filed by the petitioner was although justified but has been dismissed erroneously.

6. In support of his contention, learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in the case of **Ratnam Chettiar & Ors. Vs. S.M. Kuppuswami Chettiar & Ors.** reported in **1976 (1) SCC 214** and judgment passed by the Co-ordinate Bench of this Court at Jodhpur in the case of **Shanti Lal Vs. Shri Jagannath (S.B. Civil Writ Petition No.8005/2025 decided on 14.07.2025**.

7. Heard learned counsel for the petitioner and perused the record.

8. This Court finds that the appeal is pending before the Revenue Appellate Authority against preliminary decree and admittedly, final decree is yet to be drawn. As per the procedure, before passing final decree, revenue officials shall inspect the site position and shall also submit *kurejat* report. At the time, sufficient opportunity shall be made available to the petitioner for raising issues and even if, site inspection report or the proposal for division of the property by metes and bounds is found to be erroneous by the petitioner, then he shall be entitled to file his objection. Thus, under these circumstances, where revenue officials are yet to submit there *kurejat* report before the trial Court, filing application for appointment of Court Commissioner in an appeal against preliminary decree has rightly not been

entertained by the Revenue Appellate Authority and the Board of Revenue has also given justified reason for dismissing the revision petition filed by the petitioner. Both the Courts below have also given rational findings that in view of the facts, where final decree of partition was yet to be passed, appointment of Court Commissioner for creation of evidence at that stage was not proper.

9. As regards judgments relied upon by learned counsel for the petitioner is concerned, in the case of **Ratnam Chettiar & Ors. (supra)**, the Hon'ble Supreme Court was considering a case, where there were allegations of fraud, coercion and misrepresentation, which are admittedly not there in the instant writ petition; and the other judgment relied upon by the petitioner in the case of **Shanti Lal (supra)** is also not applicable for the reasons that in the aforesaid case, the suit was not a partition suit. In a suit for partition, decrees are passed in piecemeal. At initial stage, preliminary decree is passed and thereafter, on the basis of ascertaining the site position, existing possession and occupation of different co-sharers, proposals and objections, final decree is passed. Hence, both the judgments relied upon by learned counsel for the petitioner are not attracted in the facts and circumstances of the present case.

10. In view of above, this Court does not find any ground to interfere with the impugned orders, hence, these writ petitions filed by the petitioner are hereby dismissed.

11. Pending application(s), if any, stand(s) dismissed.

(ANAND SHARMA),J

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