

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

S.B. Civil Writ Petition No. 1010 / 2017

Abdul Rashid S/o Late Subrati Khan, Aged About 62 Years, R/o
Plot Number-171, Ligh Scheme Number-1, Chopasani Road, Kamla
Nehru Nagar, First Extension, Jodhpur.

-----Petitioner

Versus

LRs of Rasool Khan , Since deceased through legal
representatives-

1. Khalil Ahmed S/o Late Rasool Khan, R/o B-273, Kabeer Nagar,
Jodhpur

2. Rustam Ali S/o Late Rassol Khan, R/o Shifat Husain Colony,
Behind Ram Bagh, Maha Mandir Jodhpur.

3. Anwar Ali Solate Rasool Khan, R/o 11/245, Chopasani Housing
Board, Jodhpur

4. 1/3A. Mohammed Aslam S/o Late Rasool Khan, R/o Mohalla
Laykaan, Jodhpur

5. Mohammed Farook @ Senu S/o Late Rasool Khan

6. Rajjab Ali S/o Late Rasool Khan

13. Farzana W/o Mohammed Firoz D/o Late Rasool Khan, R/o
Chandna Bhakar, Jodhpur.

7. Saeed Ali @ Bablu S/o Late Rasool Khan

8. Insaf Ali @ Raju S/o Late Rasool Khan, Four Are R/o Near
Rafique UI Awaam School, Mohalla Laykhaan, Jodhpur

9. Rayana @ Bebi W/o Shafi Mohammed D/o Late Rasool Khan,
R/o Kaga, Jodhpur.

10. Zareena W/o Ishak Ji D/o Late Rasool Khan, R/o Balaji Ki
Dhaal, Masuriya Hill, Jodhpur.

11. Anisha W/o Niyaz Mohammed D/o Late Rasool Khan, R/o
Chaman Pura, Nai Sadak, Jodhpur.

12. Mehrunnisha @ Mem @ Giddi W/o Abdulhamid D/o Late
Rasool Khan, R/o Chandna Bhakar, Jodhpur.

-----Respondent

For Petitioner(s) : Mr. MA Siddiqui

For Respondent(s) :Mr. Pavej Moyal

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

06/02/2018

1. This writ petition has been preferred with the following prayers:

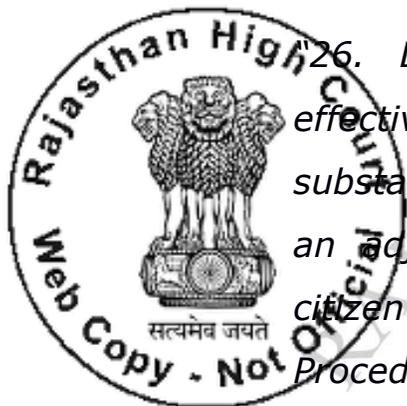
It is, therefore, most respectfully prayed that this writ petition may kindly be allowed, and by an appropriate writ, impugned order dated 16.11.2016 passed in civil suit number 383/2011 may kindly ordered to be quashed and set aside with consequential relief.

Any other appropriate writ, order or direction which this Hon'ble Court deems just and proper may kindly be passed in favour of the petitioner."

2. The suit filed by the petitioner was for declaration and partition of the particular property. The defendant had filed the written statement. The issues were framed, however, an application under Order 22 Rule 4 of the petitioner was moved along with an application under Section 5 of the Limitation Act to bring the legal representatives of deceased Rasool Khan on record. The application has been dismissed.

3. Learned counsel for the petitioner states that mere technicalities cannot become a ground for dismissal of the suit and if legal representatives are there then the suit ought to have been decided on merits.

4. Learned counsel for the petitioner has placed reliance on the precedent law laid down by the Hon'ble Apex Court in **S. Amarjit Singh Kalra (dead) by Lrs. and Ors. and Smt. Ram Piari (dead) by L.Rs. and Ors. Vs. Smt. Pramod Gupta (dead) by Lrs. and Ors., reported in (2003) 3 SCC 272**, relevant para 26 of which reads as under:-



26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights to citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain in fact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the Khata was said to be joint is of nor relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in Jamabandhi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on

the question of abatement, allowed the applications for impleadment even de hors the cause for the delay in filing the applications keeping in view the serious manner it would otherwise jeopardize an effective adjudication on merits, the rights of other remaining appellants for no fault of them. Interest of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttle the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not inter-dependant upon the one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others, as well."



5. Learned counsel for the respondents states that the application under Order 22 Rule 4 is not maintainable.

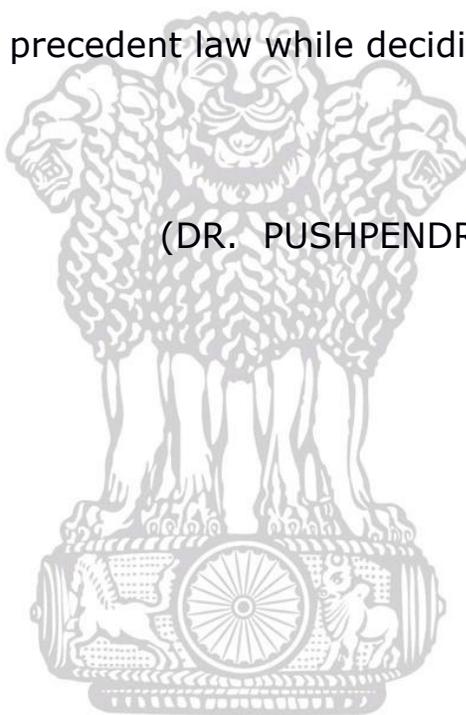
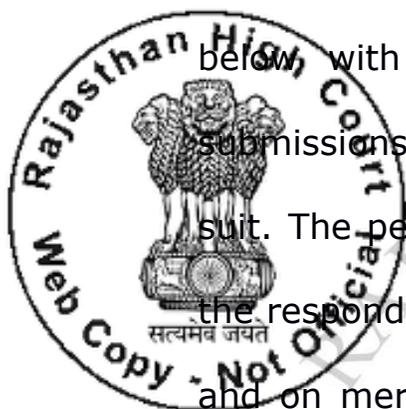
6. After hearing counsel for the parties and perusing the record of the case, this Court finds that the learned court below

ought not to have dismissed the application only on account of mere technicalities, and thus, for proper adjudication on merits, appropriate liberty should have been given to the both the parties.

7. In view of the above, the writ petition is partly allowed, and while quashing and setting aside the impugned order dated 16.11.2016, the matter is remanded back to the learned court below with liberty to both the parties to move appropriate submissions and move appropriate pleadings for restoration of the suit. The petitioner shall be at liberty to file proper pleadings and the respondents shall be having right of opposing the same on law and on merits. However, learned court below shall keep in mind the aforementioned precedent law while deciding the issue.

(DR. PUSHPENDRA SINGH BHATI)J.

sudheer



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