

तारीख हुक्म	हुक्म याकार्यवाही मय इनिशियल्सजज Revision No. 509/2004/TA/Hanumangarh Jamna Devi Vs. Mamkori	नम्बर व तारीख अहकामजो इस हुक्म की तामीलमेंजारीहुए
03.02.2021	<p style="text-align: center;"><u>Single Bench</u></p> <p style="text-align: center;">Mahendra Kumar Parakh, Member</p> <p><u>Present:</u></p> <p>Shri Pradeep Vishnoi:counsel for the petitioners. Shri Amrit Pal Singh : counsel for the non-petitioners.</p> <p style="text-align: center;">- - -</p> <p>This revision has been filed under section 230 of the Rajasthan Tenancy Act, 1955 against the order of Assistant Collector, Pilibangadated 22.01.2004 by which application under Order 7 Rule 11 CPC of the applicant was rejected.</p> <p>Brief facts of the case are that father-in-law of petitioner no. 1 and father of petitioner no. 2 Shri Sheokaran S/o Shri Ramji was khatedar-tenant of Chak 31 JRK, Tehsil Pilibanga, District Hanumnangarh having an area of 3.795 hectare who died in 1994. Late Sheokaran had two sons viz. Hariram and Hanuman and four daughters viz. Bhagi Devi, Meera Devi, Pura Devi and Mamkori. Of these, Meera Devi, Pura Devi and Hariram have also died and whose successors have been made parties in this case. Bhagi Devi, respective successors of Meera Devi, Pura Devi and Hariram released their respective shares and release deed was registered on 28.01.2002. According to which, they released their respective 1/6th share in favour of brother Hanuman and Jamna Devi widow of Hariram. The sons of late Hariram viz. Ram Kumar and Prem Kumar released their respective shares in favour of Jamna Devi widow of Hariram. While non-petitioner no. 1 Mamkori did not release her share, though she had agreed to release her share at the time of death of her father Sheokaran and till the date of institution of the suit on 18.3.2002, she had never claimed for her share. The petitioners received notice from Mamkori on 20.02.2002. Family and relatives assembled and petitioners agreed to part with 1/6th share to Mamkori, but</p>	

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	<p>she did not agree and filed the suit in the court of Assistant Collector, Pilibanga on 18.3.2002. In her counter-reply dated 16.6.2003, Mamkori claimed for 1/3rd share in the disputed land on the basis that other sisters cannot release their shares in favour of specific persons and that when they have relinquished their share in the ancestral property, there remains only 3 claimants. Her two brothers Hariram, Hanuman and she will now have 1/3rd share each in the disputed land. The petitioners/respondents no. 1 & 2 presented an application under Order 7 Rule 11 CPC stating that plaintiff/ non-petitioner no.1 initially filed a suit for 1/6th share, but later on in her counter-reply, she has claimed for 1/3rd share in the disputed land on the basis of anomalies in the release deed. The main contention is that if there is any illegality or irregularity in the release deed as pointed out by plaintiff/ non-petitioner no.1, first she will have to get the registered release deed challenged and modified accordingly in a civil court. As such, this suit now becomes barred by law, as without getting the registered release deed declared as illegal, this suit is not maintainable. The trial court after hearing both the parties to suit rejected the application under Order 7 Rule 11 on 22.01.2004, against which this revision has been preferred in the Board.</p> <p style="text-align: center;">Heard the arguments of learned counsel for petitioners and non-petitioners.</p> <p>The counsel for the petitioner narrated the facts of the case as mentioned in the plaint and argued that as late Shyokaran had two sons and four daughters and on the death of Shyokaran, 1/6th share in disputed land was to be recorded in the name of each of the successors. Three daughters/successors of daughters of Late Shyokaran viz. Bhagi Devi, respective successors of Meera Devi, Pura Devi released their share in favour of one brother Hanuman and their bhabhi Jamna devi</p>	

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	<p>(wife of another brother Late Hariram). Sons of Hariram also released their share in favour of their mother Jamuna devi, by registered release deed dt. 28.01.2002. One daughter Mamkori did not release her share. Instead after 8 years of the death of father she gave a notice to the brothers for giving 1/6th share. The family members assembled and agreed to give 1/6th share to Mamkori but she filed a suit for declaration u/s 88 and 188 against the brothers. In reply to the suit when she came to know that her sisters have released their respective shares in favour of their brothers or their family, she has come up with new assertion by way of counter reply and claimed that co-shares in the ancestral property cannot release their share in favour of specific relatives. They can release their complete share in favour of remaining co-sharers or the State Govt and therefore she has stated the release deed to be illegal and void. As such she is now claimant for 1/3rd share in the disputed land. In reaction to the averments in this counter reply, the petitioners presented an application under order 7 Rule 11 before the trial court stating that without getting the duly registered release deed declared as illegal in a civil court, the suit is not maintainable as the same cannot be tried by this court as the decision of the case is dependent on the registered release deed which has been challenged in the court of A.C.M., Pilibanga but this court has no jurisdiction to declare it void and irregular. Surprisingly, Mamkori has now started claiming 1/3rd share in the disputed land on having knowledge about the release deed which is not only ridiculous but also beyond legal provisions. As such, the trial court has erred in rejecting the application under order 7 Rule 11 while it should have accepted the application under Order 7 Rule 11 as the suit is barred by law on the basis of Counter reply which amends the original plaint and calls for decision on registered release deed which is not in the ambit of trial court.</p>	

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	<p>The learned counsel for the non- petitioner argued that Mamkori has rightly filed a suit for declaration in the court of Assistant Collector, Pilibanga as she is rightful in claiming share in the ancestral property. As regards claim of 1/3rd share this will be tried upon in the trial court after framing issues and collecting evidence on the issues framed. At this stage the application under Order 7 Rule 11, the only clause which is to be looked into is whether the case is barred by law. There is no reason why this case can be considered as barred by law. As such the application presented by Respondents no.11-12 in the trial court is not maintainable and the trial court has rightly rejected the application. The revision may therefore be rejected and the file be sent to Assistant Collector, Pilibanga for speedy trial of the case.</p> <p>Considered the arguments of the learned counsel for both the parties to this petition and perused the records carefully.</p> <p>It is evident from the record that Mamkori has herself accepted that she barely visits the family and now after coming to know about the registered release deed dt. 28/01/2002 whereby her other sisters or their successors have released their respective shares in the disputed property, she has come up with a new claim in the counter reply that she is now entitled for 1/3rd share in the disputed property. In the light of the counter reply of the plaintiff non-petitioner no. 1, now it is to be examined as to whether this claim and relief sought in the Counter reply challenging the registered release deed can be tried upon by the Trial Court. In my considered opinion the Plaintiff non petitioner no. 1 has challenged the registered release deed which can not be interpreted her way by the trial court and need to get it challenged in the civil court. The</p>	

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	<p>plaintiff/ non-petitioner no.1 can not force the other co-shares to release their shares in her favour. As a successor of her father, she has a right to claim 1/6th share in the disputed land which has been accepted by the other co-sharers but her claim for 1/3rd share in the disputed land cannot sustain until she challenges the registered release deed in the Civil court. The claim made in the Counter reply is found to be beyond the jurisdiction of the trial court and therefore comes under per view of Order 7 Rule 11 CPC as being barred by law and therefore the application under Order 7 Rule 11 deserves to be accepted.</p> <p>In view of the above discussion, it is amply clear that as regards the right to get 1/6th share in the disputed land, there is no dispute but claim of the plaintiff non petitioner no. 1 for 1/3rd share is not maintainable until she challenges the registered release deed in civil court.</p> <p>As such this revision is accepted and the order of the Assistant Collector, Pilibanga dt. 22.01.2004 is set aside. The case file relating to the suit for declaration is returned to Assistant Collector, Pilibanga with the instruction to decide the suit in the light of above observations within a period of 2 months.</p> <p>Both the parties to the petition are directed to be present in the trial court on 1/3/2021</p> <p>Pronounced.</p> <p style="text-align: center;">(Mahendra Kumar Parakh) Member</p>	