HIGH COURT OF JAMMU &KASHMIR AND LADAKHAT SRINAGAR

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Whether the operative part or full judgment is pronounced: ***Full***

FAO No.17/2026

RAJENDAR KUMAR KACHROO & ORS.

...APPELLANT(S)

Through: - Appellant No.1 present in person.
Ms. Asifa Rashid Padder, Advocate (for A2 to A12)

Vs.

BALDEV SINGH ...RESPONDENT(S)

Through: - Mr. S. A. Wani, Advocate, with
Mr. Imbisat Liyaqat, Advocate
Mr. Z. A. Wani, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellants have assailed order dated 16.06.2026 passed by the learned Additional District Judge, Srinagar (for short "the trial court"), whereby application of the appellants/plaintiffs for grant of interim injunction under Order 39 Rule 1 and 2 of CPC has been dismissed.

2) It appears that appellants/plaintiffs filed a suit for declaration and injunction against respondent/defendant before the trial court. In the plaint it was alleged by the plaintiffs that they are lawful owners in possession of land

measuring 69.5 kanals comprised in khasra Nos. 097 and 1098 (Dafa 5 Shamilat Deh) situated at village Chaterhama, District Srinagar. It was alleged that the defendant, who is former Director of a defunct company, G. D. Housing and Estate Developers Pvt. Ltd., in the year 2017 or thereabouts unlawfully took possession of 700 kanals of land in Chaterhama which included the government land, the land belonging to plaintiffs as also the land belonging to several other villagers. In the year 2020 or thereabouts, the government repossessed its land and soon thereafter, the plaintiffs and some other farmers also repossessed their land, but the remaining land about 300 kanals continued to be in unlawful possession of the company of which the defendant happened to be the Director.

3) It has been submitted that enquiry report of commission constituted by the Financial Commissioner in the year 2024, confirms that no entries of title or possession exist in the revenue record in the name of G. D. Housing and Estate Developers Pvt. Ltd, thus 300 kanals of land are in illegal possession of the defendant. According to the plaintiffs, the company, of which the defendant happens to be the Director, has been struck off the register of companies.

4) It has been submitted that the defendant is now forcibly attempting to occupy the land of the plaintiffs without any right and title. It has been submitted that the plaintiffs do not presently live in Srinagar and the defendant is trying to take advantage of the said situation.

5) According to the plaintiffs, despite repeated objections and complaints to the Revenue Department and the Police, the defendant continues to attempt unlawful occupation by employing force and intimidation. It has been alleged in the plaint that whenever the plaintiffs visit their property, plant trees, erect fences or place signboards indicating ownership, the musclemen of the defendant threaten and physically prevent them from doing so.

6) Regarding their ownership, the plaintiffs have claimed that they have become owners of the suit land on the basis of validly executed sale deeds which are 24 in number. Copies of these sale deeds have been placed on record.

7) On the basis of aforesaid assertions, the plaintiffs have sought a declaration that they may be declared as lawful owners in possession of the suit land with a permanent prohibitory injunction restraining the defendant from interfering with the plaintiffs' ownership and possession of the suit land. The plaintiffs also filed an

application under Order 39 Rule 1 and 2 of CPC along with their suit seeking interim injunction.

8) The defendant contested the suit by filing his written statement, wherein he has submitted that the plaintiffs have suppressed material fact with regard to pendency of similar writ petition bearing WP(C) No.1264/2023 relating to the same property before this Court, as such, the suit is liable to be dismissed on this ground only. It has been submitted that the revenue agency in its report rendered after holding demarcation of the entire village Chaterhama, has reported that in survey Nos.1096 and 1097, the plaintiffs are not holding any land in their possession on spot and the mutations relied upon by them are not found in the record. It has been submitted that the sale deeds alleged to have been executed do not pertain to the land in occupation and possession of the defendant.

9) The defendant has submitted that as per the detailed enquiry held by the government with respect to village Chaterhama, the plaintiffs have been found without any land in their possession and the mutation orders relied upon by them were not found in records and even some mutation orders do not match with the sale deeds and their ownership stands disputed by the government. It has been

contended that ownership rights in respect of the suit land have never been transferred in favour of the plaintiffs, as such, the sale deeds are sham.

10) It has been submitted that even though the defendant was one of the Directors of G. D. Housing and Estate Developers Pvt. Ltd., but a new cooperative housing society stands registered by the defendant which is functioning under the name of J&K GD Cooperative Housing Infrastructure Pvt. Ltd. It has been submitted that the said cooperative society has purchased land on spot through proper sale deeds from the persons who were either the land owners of the village or had taken the share from Shamilat land under Section 5 on pro-rata basis. It has been submitted that the land owners have executed power of attorneys in favour of the defendant and empowered and authorized him to hold and sell the land to any person. In pursuance of these lawful power of attorneys, the defendant has sold some land through registered sale deeds, copies whereof have been placed on record.

11) According to the defendant, the plaintiffs are not holding any land on spot, as such, there is no question of any interference from him. It has been submitted that the sale deeds executed in favour of the plaintiffs are paper

transactions, as the vendors did not hold any Shamilat land on spot which fact is confirmed by the enquiry report. According to the defendant, the attestation of mutation does not confer any title in respect of the suit land in favour of the plaintiffs and they cannot claim right on the basis of sham documents.

12) The learned trial court, after analyzing the rival pleadings and after hearing the parties, dismissed the application of the plaintiffs under Order 39 Rules 1 and 2 of CPC through the medium of the impugned order. While dismissing the said application, the learned trial court observed that the plaintiffs have concealed the fact that they had filed a writ petition before the High Court wherein they have acknowledged that the defendant is in possession of the suit land. It has been further observed that as per the enquiry report, the defendant is in possession of approximately 261 kanals of land which is bounded by G.I. sheets and that the suit property forms part of the said land which the defendant has been holding on the strength of power of attorneys and sale deeds from actual owners of the land in question. The learned trial court has observed that there is a cloud over the plaintiffs' title over the suit land and they are out of possession, as such, the suit itself is not maintainable without seeking the relief of possession.

Thus, the learned trial court came to the conclusion that there is no *prima facie* case in favour of plaintiffs.

13) While discussing the balance of convenience, the learned trial court observed that grant of injunction in favour of the plaintiffs would disrupt the defendant's long-standing possession and it would prejudice the rights of third parties who have purchased land from the defendant in good faith. It was further observed that loss, if any, that may be caused to the plaintiffs, can be adequately compensated in terms of money. It was further observed by the learned trial court that the plaintiffs are guilty of suppression of material fact relating to filing of writ petition before the High Court on same subject matter. On these grounds the learned trial court proceeded to dismiss the application of the plaintiffs vide impugned order dated 16.06.2026.

14) The appellants/plaintiffs have challenged the impugned order on the grounds that the same has been passed by the trial court by exceeding its jurisdiction. It has been further contended that the learned trial court has virtually conducted a minitrial and returned findings on disputed questions of title, ownership and possession without evidence. It has further been contended that the

learned trial court has erred in accepting the claim projected by the defendant, who, admittedly, has procured possession on the basis of power of attorneys, which are not documents of title. It has also been contended that the learned trial court has misapplied the settled legal principles for grant of interim injunction.

15) I have heard appellant No.1 in person and the learned counsels appearing for the parties. I have also gone through the record of the trial court, the impugned order and the grounds of appeal.

16) It is a settled law that scope of power of an Appellate Court to interfere with an order of a trial court passed under Order 39 Rules 1 and 2 of CPC is narrow and it is only if the discretion exercised by the trial court is found to be arbitrary, perverse, and against the settled principles of law that the Appellate Court would intervene. With this legal position in mind, let us now proceed to analyze the material on record.

17) Before proceeding to consider the merits of rival contentions raised by the parties, it would be appropriate to understand the controversy involved in the suit. The plaintiffs claim that they are owners in possession of suit land measuring 69.5 kanals in Khasra Nos.1097 and 1098

in Village Chatterhama, and this chunk of land has been purchased by them from erstwhile owners by virtue of sale deeds executed in their favour. Copies of these sale deeds have been placed on record. Although the plaintiffs have claimed that the suit land along with land belonging to State and other landowners, total measuring 700 kanals, was forcibly occupied by the defendant, but it has been pleaded that in the year 2020, the Government as well as plaintiffs and some other landowners repossessed their land. In spite of this, the defendant is stated to be in possession of about 300 kanals of land in an illegal manner.

18) The plaintiffs have nowhere admitted in their plaint that the defendant is in possession of the suit land which has been purchased by the them by virtue of the sale deeds executed in their favour. The only contention of the plaintiffs is that the defendant is obstructing them when they visit their property or when they intend to plant trees, repair or rebuild the fencing. When we have a look at the impugned order, it is revealed that an observation has been made by the learned court that the plaintiffs have admitted that the suit land is in possession of the defendant. There is nothing in the pleadings filed by the plaintiff to show that they have admitted the possession of the defendant over

the suit land. Thus, observation of the learned trial court in this regard is contrary to what has been pleaded by the plaintiffs.

19) The learned trial court has also relied upon the pleadings filed by the plaintiffs in the writ petition to record the finding that there is an admission on the part of the plaintiffs that defendant is in possession of the suit land. A perusal of the assertions made in the writ petition, a copy whereof is on record, would reveal that the plaintiffs have alleged that the defendant is in illegal possession of 261 kanals of land, as a result of which the land of the writ petitioners measuring 69.5 kanals falling in Khasra No.1097 stands impacted. It has been pleaded by the plaintiffs in the said writ petition that their right to enjoyment, use and occupation of the said land is being restricted by illegal possession of land measuring 261 kanals falling under Khasra No.1097 by the defendant. In fact, the plaintiffs have clarified in the said writ petition that entry to their land has been stopped by the members of J&K GD Cooperative Housing and Infrastructure Ltd. as the two parcels of land belonging to the plaintiffs are behind the tin-sheet boundary and in the middle of land purportedly owned by the society.

HIGH COURT JAMMU & KASHMIR AND LADAKH

20) From the above analysis of the contents of the writ petition, it is clear that the plaintiffs have nowhere admitted in the writ petition filed by them that the defendant has occupied the land which is subject matter of the suit. The plaintiffs are only alleging obstruction on the part of the defendant qua their access to the suit land. The observation of the learned trial court in this regard is, therefore, perverse.

21) One of the grounds on which the learned trial court has dismissed the application of the plaintiffs is that they have suppressed the fact that they had filed a writ petition regarding the same subject matter before this Court. In this regard, it is to be noted that the writ petition filed by the plaintiffs was against the revenue authorities of UT of J&K calling upon them to appoint an expert committee for the purpose of reconstruction of revenue record in respect of Khasra No.1097 of Village Chatterhama and allow the plaintiffs to use and occupy the suit land, besides challenging report dated 13.07.2022 relating to land of the plaintiffs. The said writ petition was withdrawn by the petitioners after the committee constituted by Deputy Commissioner, Srinagar, rendered its report dated 26.09.2024. Since in the writ petition filed by the plaintiffs, they had challenged the earlier report of the committee and

during pendency of the said writ petition, a fresh report came to be formulated by the committee headed by the Deputy Commissioner, Srinagar, therefore, the grievance of the plaintiffs to that extent stood redressed, which prompted them to withdraw the writ petition.

22) However, even the report dated 26.09.2024 rendered by the fresh committee, has certain aspects which go adverse to the rights of the plaintiffs. It is for this reason that the plaintiffs have filed the suit, which is subject matter of the present appeal, seeking a declaration about their ownership and possession so as to remove cloud which has been cast upon their title to the suit land in view of the observation recorded in the fresh report. In these circumstances, the fact relating to filing of the writ petition and its withdrawal by the plaintiffs is not of a material nature that would have a bearing upon the outcome of the suit. On this ground, it was not open to the learned trial court to throw out the case of the plaintiffs.

23) Another ground on which the learned trial court has declined to grant interim injunction against the defendant is that the suit itself appears to be not maintainable as the plaintiffs have not sought the relief of possession. In this regard, as already noted, the plaintiffs have nowhere

pleaded that suit land has been occupied by the defendant, even though the defendant has pleaded that he is in possession of the said land. This becomes a triable issue. At this stage, there is no material on record to show that the plaintiffs are not in possession of the suit land. Therefore, it was premature on the part of the learned trial court to record a *prima facie* finding that the suit is not maintainable.

24) It has been contended by learned counsel for the respondent that as per report of the committee headed by the Deputy Commissioner rendered on 26.09.2024, the mutation orders attested in favour of the plaintiffs on the basis of the sale deeds are doubtful, and in the said report the committee has cast a serious doubt about validity of the sale deeds on the basis of which the plaintiffs are claiming their title. Therefore, there is no *prima facie* case in favour of the plaintiffs.

25) It is true that in the report dated 26.09.2024, the committee has opined that the sale deeds in favour of the plaintiffs are invalid because the vendors listed in the deeds did not have the right to transfer the land under Shamilat Rules and it is also a fact that the committee has recorded that mutations existing in the Parat Patwar are missing in

the scanned records. However, it is to be noted that committee of revenue officers has no jurisdiction to declare sale deeds invalid. The question whether the sale deeds executed in favour of the plaintiffs, on the basis of which they are claiming right to the suit property, is a matter which has to be decided by the civil court and for this purpose the plaintiffs have rightly sought a declaration by filing the suit before the trial court. At this stage, without holding trial on the issue as to whether vendors who transferred the suit land to the plaintiffs had any title to the same, it cannot be stated that the sale deeds executed in favour of the plaintiffs are invalid.

26) So far as the mutation orders are concerned, the committee has admitted that these mutation orders are existing in Parat Patwar. Merely because these mutation orders do not find mention in the scanned record does not mean that these mutation orders are not existing. This essential aspect of the matter has been completely ignored by the learned trial court while passing the impugned order.

27) The learned trial court has also erred in holding that balance of convenience lies in favour of refusing injunction to the plaintiffs on the ground that the defendant has sold

portions of the land to third parties. In this regard, it is to be noted that the plaintiffs claim right to suit property on the basis of registered sale deeds which have culminated in passing of mutation orders, whereas the defendant is claiming right on the basis of power of attorneys executed in his favour by various landowners. A duly registered sale deed is the recognized mode of transfer of immovable property. So far as execution of power of attorneys in respect of the land is concerned, the same is not the recognized mode of transfer of property. Therefore, allowing the defendant to create third party interest in the suit property would certainly prejudice the rights of plaintiffs thereby causing irreparable loss to them. When we balance the rights of the plaintiff in respect of the suit land and the rights of the defendant to the said land, the scales tilt heavily in favour of the plaintiffs because the plaintiffs are armed with registered Sale Deed, whereas the defendant is claiming right on the basis Power of Attorneys. The defendant may be in possession of land adjacent to the suit land, but that does not give him the right to transfer the suit land.

28) For what has been discussed hereinabove, it is clear that the impugned order passed by the learned trial court suffers from perversity and illegality, as such, the same is

not sustainable in law. Accordingly, the appeal is allowed and the impugned order passed by the learned trial court is set aside. The respondent/defendant is restrained from creating any third-party interest in the suit land, i.e. land measuring 69.5 kanals comprised in Khasra Nos.1097 and 1098 situated at Village Chatterhama, District Srinagar, till final disposal of the suit.

(Sanjay Dhar)
Judge

SRINAGAR
27.11.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**

HIGH COURT
JAMMU & KASHMIR AND LADAKH