

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 04.07.2025
Pronounced on: 11.07.2025

CM(M) No.284/2024

MOHAMMAD SHAFI BHAT & ORS. ... PETITIONER(S)

Through: - Mr. M. A. Makhdoomi, Advocate.

Vs.

GHULAM NABI BHAT & OTHERS ...RESPONDENT(S)

*Through: - Mr. N. A. Beigh, Sr. Advocate, with
Mr. Mohammad Murshid, Advocate.*

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

JUDGMENT

1) The petitioners have challenged order dated 12.06.2024 passed in an appeal by learned 2nd Additional District Judge, Srinagar (hereinafter referred to as “the appellate court”) whereby order dated 02.02.2023 passed by learned Munsiff (Sub Registrar), Srinagar (hereinafter referred to as “the trial court”) in an application under Order 39 Rule 1 and 2 of the Civil Procedure Code filed by the respondents/plaintiffs, has been set aside and the parties have been directed to maintain status quo with regard to the suit property.

2) It appears that the respondents/plaintiffs have filed a suit for declaration and injunction before the trial court. According to the respondents/plaintiffs, their ancestor

had left behind landed property in Village Nowgam which devolved upon his two sons, namely, Rehman Bhat and Ramzan Bhat. Rehman Bhat is stated to have died leaving behind two sons, namely, Salam Bhat and Qadir Bhat whereas Ramzan Bhat is stated to have left behind his daughter, namely, Mst. Khati. According to the plaintiffs, Salam Bhat, Qadir Bhat and Mst. Khati lived jointly till around the year 1970, whereafter they partitioned their joint property situated at Nowgam. It has been pleaded by the plaintiffs that upon partition, land measuring 02 kanals and 08 marlas under Survey No.878 situated at Village Nowgam fell to the share of Abdul Salam Bhat, the predecessor-in-interest of the plaintiffs. It has been pleaded that Ab. Salam Bhat was enjoying ownership and possession of the suit property and after his death, the same has devolved upon the plaintiffs and proforma defendants. It has been further pleaded that the plaintiffs and proforma defendants have been cultivating the suit land since the year 1970 but the contesting defendants/ petitioners are trying to cause interference in the peaceful possession and ownership of the plaintiffs over the suit land.

3) On the basis of aforesaid pleadings, the plaintiffs sought a declaration that they be declared as owners in

possession of the suit land. They also sought a perpetual injunction against the defendants restraining them from interfering in plaintiffs' peaceful ownership and possession of the suit land.

4) Along with the aforesaid suit, the plaintiffs filed an application under Order 39 Rule 1 and 2 of CPC seeking a temporary injunction restraining the defendants from causing any kind of interference in the suit land.

5) The petitioners/defendants contested the suit by filing their written statement, wherein they claimed that the suit land has since long been in actual possession of Mst. Khati, the ancestor of contesting defendants, which is supported by the copies of revenue record. It has been submitted that the plaintiffs have not placed on record any material to show that they are owners in possession of the suit land. It has been contended that the plaintiffs and proforma defendants have never been in possession of the suit land. On this ground it has been contended that the suit filed by the plaintiffs is not maintainable.

6) The learned trial court, after hearing the parties and after analysing the pleadings, dismissed the application of the plaintiffs for grant of interim injunction in terms of order dated 2nd February 2023. While dismissing the application, the learned trial court observed that the

plaintiffs have failed to place on record any material to show that they are in possession of the suit land whereas the revenue extracts placed on record by the defendants prima facie show that they are in possession of the suit land. On this basis, the learned trial court came to the conclusion that the plaintiffs have failed to establish a prima facie case in their favour.

7) Aggrieved of the aforesaid order, the plaintiffs filed an appeal before the learned appellate court. Vide impugned order dated 12.06.2024, the learned appellate court allowed the appeal and directed the parties to maintain status quo with regard to the suit property. The learned appellate court in its impugned order has observed that because the plaintiffs have supported their claim with sworn affidavit and that they have to prove their ownership and possession over the suit land, therefore, in order to preserve the lis, interim relief is required to be granted in their favour.

8) The petitioners/contesting defendants have challenged the impugned order passed by learned appellate court on the grounds that the same has been passed without proper application of mind and a grave error of jurisdiction has been committed by the appellate court. It has been further contended that the learned

appellate court has failed to appreciate that the entries in the revenue record support the contention of the dependents and without there being any rebuttal to the same, it cannot be stated that the plaintiffs have carved out a prima facie case in their favour. It has been contended that the learned trial court has passed a well-reasoned order and it was not open to the learned appellate court to interfere in the said order in exercise of its appellate jurisdiction.

9) I have heard learned counsel for the parties. I have also perused record of the case including the grounds of appeal, order passed by the learned trial court as well as the impugned order passed by the learned appellate court.

10) The case of the plaintiffs before the trial court as projected by them in their plaint is that in the year 1970 Salam Bhat, Qadir Bhat and Mst. Khati, who were co-sharers of the landed estate left behind by their predecessor in interest, partitioned the same, whereafter the suit land fell to the share of Abdul Salam Bhat and since then the plaintiffs and the proforma defendants have been in possession of the suit land and now the defendants, who happen to be successors in interest of Mst. Khati, are trying to interfere in the suit land without any right or interest.

11) One thing that plaintiffs have admitted is that the partition of the joint estate took place in the year 1970. However, they have not placed on record even a single document in the shape of any revenue extract to support their contention that the suit land had fallen to their share and that the same has been and is in their possession. Their claim is based only upon the affidavits sworn by them in support of the plaint and the application for grant of interim injunction. On the other hand, the contesting defendants have placed on record of the trial court a copy of Khasra Girdawari issued in the year 2022, according to which the suit land measuring 02 kanals and 08 marlas is under the personal cultivation of Mst. Khati, the predecessor in interest of the contesting defendants and her name is also reflected in the ownership column in the revenue record. They have also placed on record a copy of Jamabandi Chaharsala in respect of the suit land which shows that Mst. Khati was the co-owner of the landed estate left behind by the predecessor in interest of the parties.

12) There is a presumption of correctness attached to the entries made in the revenue records in terms of section 31 of the Land Revenue Act. This presumption, of course, is rebuttable in nature. As already stated, copy of Khasra

Girdawari in respect of the suit land shows that the predecessor in interest of the contesting defendants is owner in possession of the suit land. This presumption has not been rebutted by the plaintiffs by placing on record any document to the contrary. Merely swearing an affidavit that they are owners in possession does not dislodge the presumption attached to the entries in Khasra Girdawari. Therefore, prime facie it can be stated that it is the contesting defendants who are in possession of the suit land. Thus, the very first ingredient of establishing a prima facie case for succeeding in an application for grant of interim injunction has not been made out by the plaintiffs in the present case. In view of this, there is no need to deliberate upon the other two ingredients i.e. balance of convenience and irreparable loss in case of grant or refusal of interim injunction in the present case.

13) The learned trial court has properly analysed the pleadings and the documents on record, whereafter it has come to the conclusion that the plaintiffs have failed to establish a prima facie case in their favour but the learned appellate court, it seems, in its anxiety to protect the subject matter of the lis, directed maintenance of status quo on spot without realising that the plaintiffs had failed to establish a prima facie case in their favour. It is not that

in every case where a person files a suit for injunction and claims to be in possession of the suit property without placing on record any document to this effect that an interim injunction directing the parties to maintain status quo on spot is required to be passed. It is only in such cases where the plaintiff establishes a prima facie case in his favour that a trial court is obliged to preserve the subject matter of the lis by passing an appropriate interim injunction.

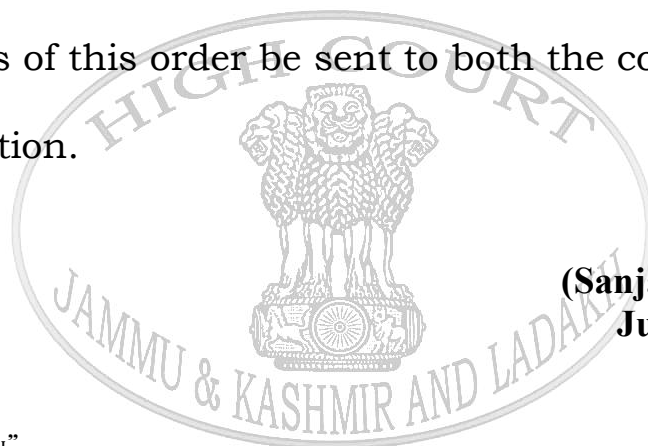
14) In the present case the plaintiffs have failed to support their assertion regarding possession of the suit property and on the contrary, the contesting defendants have been able to prima facie show that they are in possession of the suit land. The learned trial court had, therefore, properly exercised its jurisdiction and discretion to refuse interim injunction in favour of the plaintiffs. While exercising the appellate power in such matters, the appellate court cannot interfere unless the discretion exercised by the trial court is arbitrary and perverse. In the present case, as already stated, the discretion exercised by the learned trial court is neither arbitrary nor perverse, as such, it was not open to the learned appellate court to interfere with the order passed by the learned trial court.

15) In the instant case, the learned appellate court while passing the impugned order, has acted beyond its jurisdiction and has committed a grave error which has resulted in miscarriage of justice. Thus, this is a fit case where this Court should exercise its jurisdiction under Article 227 of the Constitution to interfere in the impugned order passed by the learned appellate court.

16) Accordingly, the petition is allowed and the impugned order passed by the learned appellate court is set aside.

17) Copies of this order be sent to both the courts below for information.

Srinagar,
11.07.2025
"Bhat Altaf-Szegy"



(Sanjay Dhar)
Judge

Whether the order is reportable: **Yes/No**