Sr. No.04
Regular List

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

CM(M)512/2025
CMNos.7685/2025 & 7686/2025
Caveat No.2949/2025

ABDUL KHALIQ SOFI

...PETITIONER/APPELLANT(S)

Through:-Mr. Malik Mushtaq, Advocate

Vs.

MOHAMMAD SHAFI MIR AND ANOTHER

...RESPONDENT(S)

Through:-Mr.M.Amin Khan, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT
24.11.2025

1) The petitioner through the medium of present petition has challenged order dated 17.11.2025 passed by learned District Judge, Pulwama, whereby appeal against order dated 11.03.2025 passed by learned Sub Judge (Special Mobile Magistrate) Pulwama vacating interim injunction in a suit filed by the petitioner against the respondents, has been upheld.

2) Issue notice to the respondents. Mr. M.Amin Khan, Advocate, who is on caveat, accepts notice on behalf of respondents. Caveat stands discharged.

3) Heard and considered.

4) It appears that the petitioner (hereinafter "the plaintiff") has filed a suit seeking permanent injunction against the respondents (hereinafter "the defendants") before the Court of learned Sub Judge (Special Mobile Magistrate) Pulwama (hereinafter the trial Court). In the said suit the plaintiff has claimed that he has purchased a piece of land measuring 15/12 feet situated at Main Market Shadi Marg on right side of the Shadimarg Keller Road from defendant No.1 for an amount of Rs.4,50,000/- for construction of shop. It has been pleaded that the plaintiff paid an amount of Rs.3,92,500/- to defendant No.1 on 02.12.2009 against a proper receipt, whereafter he constructed two storied shops over the suit land. It has been further pleaded that even the balance amount of Rs.57,500/- has been paid by the plaintiff to defendant No.1. Thus, according to the plaintiff he is the absolute owner of suit property, where he is running his bakery business. It has been submitted that the plaintiff has invested an amount of Rs.1,82,000/- for constructing the shops but the defendants are interfering in his possession over the suit property.

5) The defendants contested the suit by filing their written statement, in which they have denied having sold the suit property to the plaintiff. According to the defendants, they are the exclusive owners in possession of the suit property consisting of the shopping complex of three shops on ground floor. It has been submitted that the defendants have also constructed first floor of the said shopping complex. According to the defendants, the plaintiff approached defendant No.1 in the year 2009 for renting out two shops to him and at that time he had given an advance rent of Rs.3, 92,500/- in various installments to defendant No.1. It has been submitted that the rent of the suit shops was fixed at Rs.2250/- per month and it was also agreed that after seven years it will be enhanced to 20% per month up to next seven years. It has been submitted by the defendants that till December, 2023 an amount of Rs.4,15,500/- was due on account of rent from the plaintiff and after deducting the amount of Rs.3, 92,500/- the plaintiff is in arrears of rent of Rs.23,000/-, out of which he has paid an amount of Rs.5400/- leaving a balance of Rs.17,600/-.

6) It has been pleaded that when defendant No.1 requested the plaintiff to pay the balance rent and to pay rent as per the market value which is Rs.4000/- per month from January 2024 onwards, he avoided to do so on one pretext or another. It has been submitted that the plaintiff has filed false and frivolous suit and that he does not have ownership rights in respect of the suit property. It has been submitted that the plaintiff is only a tenant and is not an absolute and exclusive owner of the suit property.

7) It seems that the learned trial Court vide order dated 11.03.2025 dismissed the application of the plaintiff under Order 39 Rule 1 and 2 CPC and vacated the interim direction that had been passed in his favour. The said order came to be challenged by the plaintiff by way of an appeal before the learned Principal District Judge, who vide order dated 17.11.2025, while dismissing the appeal upheld order passed by the learned trial Court.

8) The plaintiff has challenged the impugned orders passed by the Courts below on the grounds that the same are contrary to law. It has been contended that the plaintiff cannot be dispossessed from the suit property except in due course of law, even if it is assumed that his status is of a tenant. It has been submitted that in view of the fact that the plaintiff was in possession of the suit property it was the duty of the Courts below to protect his possession.

9) The claim of the plaintiff before the trial Court and before this Court is that he has purchased the suit property and paid the amount of consideration to defendant No.1. In this regard the plaintiff relies upon the receipt executed by defendant No.1 in respect of Rs.3,92,500/-. Learned counsel for the plaintiff has contended that the receipt could have been read as evidence for collateral purposes.

10) In the above context, if we have a look at Section 49 of the Registration Act, it lays down the effect of non-registration of documents which are required to be registered. Proviso to Section 49 lays down that an unregistered document affecting immovable property and required by the Registration Act, or the transfer of Property Act, to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by the registered instrument. The document (receipt of amount), admittedly does not contain any covenant with regard to transaction of sale relating to the suit property. The same is admittedly not a registered document. Had it been a case of unregistered agreement to sell, the things may have been different, inasmuch as, the plaintiff by taking aid of proviso to Section 49 of the Registration Act, could have used the said document as evidence of a contract in a suit for specific performance, but such is not a case. Neither the plaintiff has filed suit for specific performance nor the document (receipt of money) contains any covenant affecting the suit property. Thus, the receipt of money by defendant No.1 cannot be taken as evidence with regard to agreement to sell the suit property. The contention of the plaintiff in this regard is misconceived.

11) It has been next contended by the plaintiff that even if it is assumed that he was a tenant in respect of the suit property, still then his possession was required to be protected by the trial Court till such time he was evicted after adoption of due course of law.

12) In the above context it is to be noted that there was no rent deed executed by the parties in respect of the suit property and if the plaintiff claims to be the tenant of the suit property he is only a tenant by sufferance. According to the defendants the plaintiff failed to get the lease extended by paying the rent at market value which he had agreed. Thus, the status of the plaintiff is that of a tenant holding over. Nonetheless it is an admitted case of the parties that the plaintiff is in possession of the suit property. The question that falls for determination is as to whether the plaintiff was entitled to protect his possession over the suit property against his eviction until the defendants obtain a decree for eviction against him.

13) In the above context it is to be noted that the plaintiff has claimed his possession over the suit property as owner and not as a tenant. This contention of the plaintiff has been found to be prima facie not tenable. The plaintiff has sought injunction against the defendants in his capacity as an owner of the suit property but his status as owner of the property has prima facie been found to be false. Once the plaintiff's right to possess the suit property as owner thereof has, prima facie, been found to be untenable, the consequential relief of injunction against his dispossession cannot be granted. The relief of injunction is an equitable relief and a litigant, whose right to such relief has been found to be prima facie, based upon falsehood, cannot be granted such relief. A litigant who seeks equitable relief has to do equity. The plaintiff in this case has come up with a prima facie false claim of ownership qua suit property, so he is disentitled to relief of injunction.

14) Otherwise also even if it is assumed that the plaintiff is in possession of the suit property as a tenant or as tenant holding over, the grant of interim protection in his favour would depend upon the determination of the question whether his eviction in accordance with law would mean filing of a separate suit for eviction against him. To find an answer of this question, we need to notice the position of law as discussed in various judicial precedents.

15) In ***Madan Lal vs. Shri Mata Vaishno Devi Shrine Board***, CSA No.18/2018 decided on 20.09.2023, this Court had an occasion to consider the aforesaid issue. It would be appropriate to reproduce the relevant paragraphs of the said judgment, which would help us in finding an answer to the aforesaid question. The same are reproduced as under:-

> "24) In **M/s. G. M. Modi Hospital and Research Centre Medical Science vs. Sh. Shankar Singh Bhandari and others, AIR 1996 Delhi 1,** a Single Judge of Delhi High Court has discussed the law on the subject in the following manner:
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> > "15. A similar question was mooted before the Court of Appeal in England in Hemmings and Wife vs. The Stoke Pages Golf Club, Limited, and another 1920 (1) K.B. 720. The Court of Appeal reversed the judgment of the trial-Judge who granted injunction. To appreciate the question, it is necessary to notice the facts. The plaintiff Hemmings was in the employment of Stoke Poges Golf Club Ltd. A cottage was given to the plaintiff by virtue of his being the employee of the Golf Club. He was not a tenant. In May 1918 he left the services and worked

for a neighbouring farmer. Subsequently, a notice was served on him to deliver possession of the cottage. Thereupon, possession was taken from-him. He filed then the suit to recover damages for forcible entry and for assault on the basis of the alleged infringement by the defendants of the statute 5 Ric. 2, stat. 1, c. 7, which enacts that a forcible entry is a punishable offence. The learned trial judge granted the relief prayed for by the plaintiff and the Court of Appeal, as stated above, differed from the view taken by him. The Court of Appeal noticed the distinction between the case of a person who occupies a premises by virtue of employment is servant and the case of a person who Occupies as atenant. The plaintiff therein relied upon the case in Newton us. Harland, 1 M & G page 644 for the proposition that nobody can take possession without any recourse to court of law and any forcible entry is a crime in law. The learned Judge Justice Erskine said in that case "There are, it is true, many cases (some of which were cited at the argument) in which it has been held that no action for trespass quare clausurn freight will lie at the suit of a tenant against the landlord for a forcible entry after the expiration of the term. The earlier authorities upon .this point are collected in kDalton's Justice, c. 129, p. 431; and Turner v. Meymott. (5) But then the reason for this is also given, namely, that the plaintiff, having no title to the possession as against his landlord, can have no right of action against him as a trespasser, for entering upon his own land, even with force; for entering upon his own land, even with force; for, although the law had been violated by the defendant, for which he was liable to be punished under a criminal prosecution, no right of the plaintiff had been infringed, and no injury had been sustained by him for which he could be entitled to compensation in damages;" and by Fry J. in Beddall v. Maitland (6), where he says: "He can recover no damages for the entry, because the possession was not legally his, and he can recover none for the force used in the entry, because, though the statute of Richard II. crates a crime, it gives not civil remedy." The Court of Appeal dealt with this case at length and found that this case was not accepted by any Court subsequently and that was no longer good law. After having considered this case, the learned Judges came to the conclusion "In the present case the defendants were undoubtedly entitled to possession of the cottage. The plaintiffs had no right and did not pretend they had any right to remain there. Assuming, but without deciding, that the entry by the defendants was a forcible entry, the right to possession was in the defendants, and the acts which are alleged as giving the plaintiffs a right of action were done in defense of their right to possession. Blades v. Higgs (2); and of the possession which they had acquired by the alleged forcible entry. I have no fear that the present decision will encourage lawlessness as was suggested for the respondent. A person who makes a forcible entry upon lands and tenements renders himself liable to punishment, and he exposes himself also to the civil liability to pay damages in the event of more force being used than was necessary to remove the occupant of the premises, or in the event of any want of proper care in the removal of his goods. If the view of the law expressed in Newton v. Harland (3) is correct it must follow that the law confers upon the lawless trespasser a right of occupancy the length of which is determined only by the law's delay."

25) Again in the case **of Pran Nath and others** (supra), this Court held that a licensee' s possession is not that of a person in settled possession and he is not, thus, entitled to say that he has right to continue in possession until evicted under some decree or order of the court.

26) In another judgment of the Delhi High Court in the case of **Thomas Cook (India) Limited vs Hotel Imperial, 2006 (15) ILR Delhi 90**, the question as to what is meant by due process of law came up for discussion before the said court. In this context, paras 27 and 28 of the judgment are relevant and the same are reproduced as under:

"27.This brings me to the second aspect of `due process of law'. It was urged by Mr Kaul that even if the plaintiff was in unlawful possession it could only be evicted by due process of law and therefore the plaintiff was entitled to an order of injunction preventing the defendants from removing the plaintiff from the said two rooms except through due process of law. It must be made clear that this argument fails in the context of this case because the plaintiff was never in possession and therefore there is no question of dispossession in the sense usually understood. The plaintiff had a mere right to use, such right was revocable, it has been revoked and the plaintiff is entitled under section 63 of the Indian Easements Act, 1882 to a reasonable time to leave the premises and take away its goods. The argument also fails because by rushing to court the plaintiff has indeed invited a judicial determination of its status. If it got an order of injunction it would ensure to its benefit. But, if it did not, then it can't be heard to say that this court has to grant an injunction all the same because otherwise it would give a license to the defendants to forcibly throw out the plaintiff without filing a suit for possession.

28.The expressions `due process of law', `due course of law' and `recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed `forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejectment from settled possession can only be had by recourse to a court of law. Clearly, `due process of law' or `due course of law', here, simply mean that a person in settled

> possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner. Now, this `due process process' or `due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the `bare minimum' requirement of `due process' or `due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the `recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

27) The aforesaid judgment of the Delhi High Court has been quoted with approval by a Three Judge Bench of the Supreme Court in the case of **Maria Margarida Sequeria Fernandes and others v Frasmo Jack de Sequeria (Dead) through LRs, AIR 2012 SC 1727.**

28) From the foregoing analysis of law on the subject, it is clear that due process of law or due course of law means that a person in a settled possession cannot be evicted without a court of law having adjudicated upon his rights qua the true owner, meaning thereby that rights of the parties have to be adjudicated by a court of competent jurisdiction. It is also clear that it is immaterial as to which of the parties brings action to a court. What is material is that rights of the parties have to be adjudicated by the competent court. Once this is done, the due process of law or due course of law can be stated to have been followed. What has been emphasized by the Supreme Court in **Krishna Ram Mahale's case (supra)** is that the person in a settled possession cannot be dispossessed without adopting due process of law. Once this requirement of due process of law is followed, a trespasser or a licensee, who has overstayed, can be evicted by the true owner by using reasonable force. The only requirement is

> that there has to be determination of the rights of the parties by the competent court, whoever may have brought action in the court."

16) In view of the law discussed hereinbefore, it is clear that requirement of due process of law gets fulfilled once a person in possession brings a suit for injunction against a person who interferes in his possession and his rights are determined in the said suit. It is not necessary for the defendants to bring a fresh suit for eviction against the plaintiff once in a suit for injunction filed by the plaintiffs against defendants the Court determines that the plaintiff does not have a prima facie case in his favour.

17) In this view of the matter, even if the plaintiff is in possession of the suit property, once the learned trial Court and the Appellate Court have rightly come to the conclusion that he has failed to establish a prima facie case in his favour, he cannot retain his possession over the suit property and his possession cannot be protected till such time the defendants obtain a decree of eviction against him. The defendants are entitled to use reasonable force to evict the petitioner/plaintiff from the suit property and the petitioner/plaintiff cannot have the benefit of protection order from the Court, because he has failed to prima facie establish his right to remain in possession of the suit property.

18) For the foregoing reasons, I do not find any ground to interfere in the impugned orders passed by the trial Court and the Appellate Court. The petition lacks merit and is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

SRINAGAR
24.11.2025
Sarveeda

Whether the order is reportable: ***Yes***