

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 06.03.2025

Pronounced on:20.03.2025

TrP(C) No.19/2024

CM No.2486/2024

Dileep Kumar Raina and others

....Petitioners/applicants

Through: Mr. Virender Bhat, Advocate

versus

UT of J&K and others

....Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG, for 1 to 3
Mr. Mohd. Yawar Hussain, Advocate,
for 4 to 7 (through video conferencing)

Coram HON'BLE THE CHIEF JUSTICE

ORDER

1. Applicants/petitioners have filed this petition/application seeking transfer of petition, titled, Mohammad Shaban & others vs Union Territory of J&K and others, bearing CM(M) No.95/2024, CM No.1705/2024, filed under Article 227 of the Constitution of India, from Srinagar Wing to the Jammu Wing of this Court.

2. The facts leading to the filing of this application are that respondents 4 to 7 herein had filed a suit with respect to the land, measuring 17 kanals and 2 marlas, comprised under Survey Nos.24, 25, 30, 31, 36, 37, 38, 40, 41, 42, 43, 49, 196/34, 226/33, situated at Village Sarab, Tehsil Shopian (now Keegam), District Shopian against some persons, namely, Triloki Nath, Soom Nath and Rattan Lal on the ground that their adverse possession had ripened into title

and, therefore, they be declared as owners of the said land. It is averred that no summons were issued to the defendants therein and by impersonation a compromise was manipulated and produced before the Court. Accordingly, a decree was drawn by the Court of Munsiff, Pulwama in terms of the said compromise and respondents 4 to 7 herein were declared as owners of the said land. It is averred that the predecessors of applicants 1 to 5 and 7 to 9 as also applicant No.6 had already migrated to Jammu, so they had no knowledge of the said suit nor they ever appeared before the Court at Pulwama. It is further averred that Triloki Nath, Soom Nath and Rattan Lal had filed an application before the said court for cancellation of the decree based on the forged compromised and also filed an application before the High Court for transfer of the same at Jammu due to the threat perception. The application for transfer of said suit came to be allowed and the suit was transferred to Munsiff Court, Jammu. It is averred that during the pendency of the proceedings in the said suit, Triloki Nath and Soom Nath died and applicants/petitioners 1 to 5 and 7 to 9 respectively were substituted in their place. Further, it is averred that the compromise decree passed by the Munsiff Court, Pulwama came to be set aside. Thereafter, the defendants-applicants herein filed their written statement and the Court of learned Munsiff vide order dated 14.08.2014 appointed Tehsildar concerned as receiver of the property. Ultimately, vide order dated 16.11.2023 the suit came to be dismissed and the receiver was directed to hand over the possession of the property to the defendants-applicants herein. Accordingly, the receiver delivered the possession of the property to the defendants-applicants herein vide order dated 14.02.2024. Feeling aggrieved, the plaintiffs-respondents 4 to 7 herein have challenged the order dated 16.11.2023 and 14.02.2024 before the Srinagar Wing of this Court.

3. Now, the defendants-applicants herein have filed the instant petition/application for transfer of the petition, titled, Mohammad Shaban & others vs Union Territory of J&K and others, bearing CM(M) No.95/2024, CM No.1705/2024, filed under Article 227 of the Constitution of India, from Srinagar Wing to Jammu Wing of this Court on the ground that the applicants are migrants from Kashmir Valley due to the threat perception, therefore, are scared of pursuing their case in the Kashmir Wing of the High Court. It is further averred that due to the threat perception, the suit filed by the plaintiffs/respondents herein came to be transferred from Munsiff Court, Pulwama to Jammu on the basis of the order passed by the High Court. It is further averred that the case was contested at Jammu for almost two decades and the suit also came to be dismissed at Jammu on 16.11.2023. The plaintiffs, respondents 4 to 7 herein, instead of challenging the said order at Jammu have challenged the same at Srinagar Wing of the High Court through the medium of CM(M) No.95/2024 despite the fact that the applicants herein have been facing threat perception at Srinagar.

4. Objections to the application have been filed on behalf of respondents 4 to 7 herein contending therein that only after getting permission for filing the petition at Srinagar, that respondents 4 to 7 have filed CM(M) No.95/2024 at Srinagar Wing of the High Court challenging the order dated 16.11.2023 whereby the suit filed by them came to be dismissed.

5. I have heard learned counsel appearing for the parties and considered their rival contentions.

6. Before two decades ago, when the plaintiffs-respondents 4 to 7 herein had filed the suit against the applicants herein before the Court of Munsiff,

Pulwama, Srinagar, admittedly, there was threat perception to the applicants herein on account of militancy related activities and it was not possible for the applicants herein to pursue their case at Srinagar nor there was the concept of virtual proceedings. Therefore, on the application of the defendants in the said suit, the suit came to be transferred to Jammu keeping in view the prevailing circumstances in Kashmir Valley. Though the threat perception to the applicants/petitioners herein cannot be denied even at this stage, however, keeping in view the virtual facility available in both the Wings of this High Court, the applicants/petitioners herein have the option to attend the hearing virtually through their counsel from Jammu itself.

7. Accordingly, this application is disposed of with a direction to the Registrar (Judicial), Srinagar Wing to provide virtual mode link to the applicants/petitioners herein as well as their counsel well in advance as and when CM(M) No.95/2024 along with CM No.1705/2024 is listed for hearing, so that the applicants and their counsel could appear and project their case from Jammu itself. Connected CM, accordingly, stands disposed of.

Jammu
20.03.2025
 (Anil Sanhotra)

(Tashi Rabstan)
Chief Justice

Whether the order/judgment is reportable ?
 Whether the order/judgment is speaking ?

Yes/No
 Yes/No