

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

CM(M) No.41/2024

Date of pronouncement : 12.11.2025
Uploaded on : 20.11.2025

Nirmal Sharma & Ors.
....Petitioners

Through:- Mr. L.K. Sharma, Sr. Advocate with
 Mr. Mohit Kumar, Advocate

V/s

Pritam Singh & Ors.
.....Respondent

Through:- Mr. B.R. Chandan, Advocate

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
JUDGMENT (ORAL)

1. The petitioners No.1 to 3 joined by Ram Prasad Choudhary, the predecessor-in-interest of the petitioners No.4 to 6, had preferred a civil suit before the Court of 2nd Additional District Judge, Jammu in which respondents No.1 to 3 herein figured as defendants No.1 to 3 and defendant No.4 being Vijay Bushan Choudhary, now deceased, in whose place legal representatives have come on record and figure in the present petition as respondents No.4 to 7.

2. The institution of the suit is of **04.10.2011** and is still in pendency.

3. The suit is for declaration with respect to sale deed dated **25.03.2008** executed by the defendant No.4- Vijay Bhushan Choudhary in favour of defendant No.1-Pritam Singh (respondent No.1 herein) read with sale deed dated **18.03.2010** executed by defendant No.1 Pritam Singh (respondent No.1 herein) in favour of defendant No.2-Ravi Kumar Gupta & defendant No.3-Parveen Kumar, as null and void with respect to suit land measuring 3 kanal comprised in khasra No.4133 min, khata No.2015 and khewat No.214 situated in Arnia tehsil Bishnah to the extent that it affects the rights of the plaintiffs as co-sharers/owners of the suit land and consequently seeking partition of the suit land by metes and bounds and separate possession of the share qua suit land, to be followed with consequential permanent prohibitory injunction.

4. In the suit, the defendant No.1-Pritam Singh (respondent No.1 herein) submitted his own written statement, whereas defendants No.2 & 3 submitted their joint written statement whereas written statement on behalf of legal representatives of deceased defendant No.4 also came to be filed by one of the legal representatives.

5. On the basis of the written statement so filed by the contesting respondent No.1 to 3, the trial court came to frame the issues in terms of order dated

08.12.2014, thereby taking the suit to the evidence stage wherein the plaintiffs led their evidence by examination of their witnesses, cross-examined by the defendants.

6. The evidence from the end of the defendants came to be led firstly by defendant No.2, who submitted his affidavit statement in examination-in-chief submitted on **07.08.2023**, along with an affidavit statements of his witnesses in the form of examination-in-chief.
7. The defendant No.2-Ravi Kumar Gupta (respondent No.2 herein), as being examined as his own witness, was cross-examined by the petitioners as plaintiffs on **20.09.2023**. After cross-examination of the defendant No.2-Ravi Kumar Gupta as witness by the petitioners as plaintiffs, the statement of said witness ought to have been closed but upon insistence of the counsel for the defendant No.1-Pritam Singh (respondent No.1 herein), the right to cross-examine was sought to be exercised which was objected to by the petitioners' side resulting in passing of impugned order dated **09.01.2024** by the court of 2nd Additional District Judge, Jammu, directing the presence of defendant No.2-Ravi Kumar Gupta as a witness for the purposes of his cross-examination by the co-defendant No.1-Pritam Singh (respondent No.1 herein), which left the petitioners, as plaintiffs, aggrieved to come up with the present revision

petition under Section 115 of the Code of Civil Procedure read with Article 227 of the Constitution of India, for examining the legality and validity of order dated **09.01.2024**.

8. The objective of civil suit is to establish and enforce the right of co-sharers/ownership of the petitioners as plaintiffs qua the suit property and thereby seeking their partitioned share which otherwise is being purportedly undermined by the execution of the sale deeds with respect to the entire suit property, being impugned in the suit.
9. The origin of sale deed is from the defendant No.4, leading to the defendant No.1 from whom finally leading to defendants No.2 & 3, meaning thereby all the defendants are wearing the same shoe and same character vis-à-vis the suit property without anything adverse in terms of right or interest against each other except to endorse and support the execution of the sale deeds entirety to the exclusion of the petitioners' purported claim as set up in the civil suit.
10. Thus, *ex facie*, the defendant No.1 cannot be heard to be in an antithetical position to the defendant No.4 from whom the suit property was first purchased by way of sale deed dated **25.03.2008** and so remains the position of the defendants No.2 & 3, who

purchased the suit property from the defendant No.1
by way of impugned sale deed dated **18.03.2010**.

11. In this entire sequences, there is nothing adverse to and fro and inter se the defendants for the purpose of being subjecting each other to cross-examination as a witnesses.
12. Indian Evidence Act, 1872 now repealed by the Bharatiya Sakshya Adhiniyam, (BSA) 2023 has the consequence of examination of witnesses in the court of law given in section 143 of the Bharatiya Sakshya Adhiniyam, (BSA) 2023 (corresponding to Indian Evidence Act, 1872).
13. Section 143 is re-produced as under:
 - (i) *Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*
 - (ii) *The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witnesses testified on his examination-in-chief.*
 - (iii) *The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.*
14. The moot question that the trial court ought to have kept in view and in proper prospective while passing

the impugned order was as to whether defendant No.1 was and is an adverse party vis-à-vis defendant No.2. The answer to this question would have outrightly 'No', in the sense that defendant No.1 is the predecessor-in-interest of the defendant No.2 & 3 in relation to the suit property and defendant Nos. 1 to 3 are successors-in-interest to the defendant No.4 with respect to the suit property.

15. Thus, all the four defendants are aligned in the same line of defense to the suit filed by the petitioners and by no stretch of imagination could be conceived to be an adversary to ask for, avail and enjoy right of cross-examination against each other.

16. If the reasoning of the trial court is to be given a clean chit, then in any given suit involving more than one defendant, evidence stage of a suit would never end with the defendants bearing same character in the civil suit enjoying exploiting the right of cross-examination upon each other, leaving the plaintiff a mere spectator in the entire suit waiting for the game of cross examination inter se the defendants not in contesting claim and position against each other to go on.

17. In view of aforesaid, the impugned order dated **09.01.2024** is held to be bad in the eyes of law,

warranting to be set aside, which is accordingly *set aside*.

18. The defendant No.1 is held to be not entitled to any right of cross-examination of the defendant No.2 and that goes with the witnesses to be produced by the defendant No.2 in support of his case in the suit.
19. The trial court is directed to commence the trial of the suit from the date the certified copy of this order is made available.
20. ***Disposed of.***

JAMMU
12.11.2025
Sneha

(RAHUL BHARTI)
JUDGE

Whether the judgment is speaking: Yes/No
Whether the judgment is reportable: Yes/No