

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

Case:- CM(M) No. 213/2025
CM No. 4478/2025
Cav No. 874/2025

Sagar Mal

.....Petitioner(s)

Through: Mr. Deepak Mahajan, Advocate.

Vs

Mukhtiar Chand & Ors.

..... Respondent(s)

Through: Mr. M. A. Bhat, Advocate.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(25.07.2025)

1. The petitioner has come with an institution of this writ petition invoking supervisory jurisdiction of this Court under article 227 of the Constitution of India whereby the petitioner is seeking examination of legality and validity of an appellate order dated 12.04.2025 passed by the court of learned Principal District Judge, Samba in terms whereof a civil miscellaneous appeal under Order 43 rule 1(r) of the Code of Civil Procedure, 1908 preferred by the petitioner has come to suffer dismissal as a consequence whereof order dated 02.09.2023 passed by the trial court of Sub Judge, Samba dismissing temporary injunction application of the petitioner in a civil suit has been upheld.

2. In simple words, the petitioner in his civil suit has suffered loss of indulgence in the matter of temporary injunction with respect to the suit property as solicited by him against the respondents No. 1 & 2 as being the contesting defendants.

3. The respondent No. 1-Mukhtiar Chand is real brother of the petitioner-Sagar Mal. The petitioner-Sagar Mal and the respondent No. 1-Mukhtiar Chand are four sons of Shounku Ram (father), other two sons being, Bansilal and Gurdas Lal.

4. Proforma respondent No. 3 is Bansilal and proforma respondents No. 4 to 10 are legal representatives of Gurdas Lal, whereas proforma respondents No. 11 to 14 are four daughters of Shounku Ram and thus, real sisters of the petitioner-Sagar Mal and the respondent No. 1-Mukhtiar Chand.

5. Shounku Ram is said to have died intestate leaving behind his land measuring 8 kanals in khasra No. 61 min, village Bari, tehsil Bari Brahmana.

6. The respondent No. 1, as being one of the co-sharers in inheritance to estate of Shounku Ram, is said to have executed a duly registered sale deed dated 01.01.2013 in favour of the respondent No. 2-Allah Rakha for 1.13 kanal of land in khasra No. 61 min.

7. The petitioner-Sagar Mal came to assail this sale deed in his civil suit filed in February, 2023 before the court of learned Sub Judge, Samba thereby seeking declaration with consequential relief of permanent prohibitory injunction.

8. In the plaint, the petitioner-Sagar Mal, as plaintiff, came to plead that the estate of Shounku Ram inherited by his legal heirs is

un-partitioned and, therefore, the respondent No. 1-Mukhtiar Chand was not having any right to alienate land measuring 1.13 kanal in favour of the respondent No. 2-Allah Rakha that too without any formal partition of the land having taken place amongst the legal heirs of Shouunku Ram.

9. As per the plaint, the possession of suit land is still with the body of the co-owners/sharers and, therefore, the respondent No. 2-Allah Rakha was having no right to disturb the possession of the co-sharers/co-owners which included the petitioner-Sagar Mal, on the basis of impugned sale deed.

10. The court of learned Sub Judge, Samba, by virtue of an *ex parte* interim order dated 27.02.2023, directed status quo on spot with respect to the suit land.

11. The respondent No. 2-Allah Rakha as being the vendee appeared in the suit and filed his written statement stating therein that upon purchase of 1.13 kanal of suit land, he constructed a house thereupon enclosing it within a boundary wall except on the front side and was, thus, in peaceful possession of the same for the last more than ten years without any iota of objection whatsoever from the end of the petitioner-Sagar Mal who is said to be residing in the immediate vicinity of the suit land.

12. It came to be set up by the respondent No. 2-Allah Rakha that the respondent No. 1-Mukhtiar Chand as a co-sharer was always well within his right to alienate land from within his share.

13. The court of Sub Judge, Samba, by virtue of an order dated 02.09.2023, came to dismiss temporary injunction application of the petitioner-Sagar Mal by an elaborate order attending both to the factual as well as legal aspects of the case.

14. Aggrieved of dismissal of his temporary injunction application, the petitioner-Sagar Mal preferred a civil miscellaneous appeal under Order 43 Rule 1(r) before the court of Principal District Judge, Samba assailing the order dated 02.09.2023 of learned Sub Judge, Samba with a highlight point in the case that the respondent No. 1-Mukhtiar Chand at best was entitled to 1 kanal of share amongst all legal heirs to the estate of Shouunku Ram and, therefore, sale of 1.13 kanal of land by the respondent No. 1-Mukhtiar Chand in favour of the respondent No. 2-Allah Rakha was in excess.

15. The court of Principal District Judge, Samba upon examining the order dated 02.09.2023 of the Sub Judge, Samba concurred with the reasoning given by the court of Sub Judge, Samba and dismissed the appeal by virtue of an order dated 12.04.2025 against which the petitioner has come in petition under article 227 of the Constitution of India which offers a very restricted scope for this Court to interfere in such like situations.

16. The best which the petitioner-Sagar Mal can do in the case is to pursue his civil suit to its logical end and in case, if the petitioner-Sagar Mal would be able to prove that the respondent No. 1-Mukhtiar Chand exceeded his share in the matter of alienation made by the impugned sale deed then surely the petitioner-Sagar Mal going to get a decree to said effect from the trial court which would restore the equity in the case.

17. In light of the aforesaid, this Court finds no compelling reason to interfere in the matter and, therefore, **dismisses** the petition.

18. A copy of this order be forwarded to the trial court of Sub Judge, Samba to be taken on record.

JAMMU
25.07.2025

Shivalee

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

