

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

Reserved on: 29.08.2025

Pronounced on: 11.09.2025

CM(M) No.234/2025

Sahil Gill, Age 35 years
President Christian Biradari Services
Registered, S/o Wazir Masih R/o 69,
Christian Colony, Veer Marg, Jammu.

..... Petitioner

Through :- Mr. P. N. Goja, Sr. Advocate with
Mr. Danish Gill, Advocate

Vs

1. Devasthan Maharishi Balmiki
Virmarg, Jammu through Sh. Omkar
Nath S/o Shri Devi Ditta Mail
President Maharishi Balmiki
Devasthan Samiti, Jammu.
2. Omkar Nath S/o Sh. Devi Ditta Mal
S/o Sh. Devi Ditta Mal R/o Purani
Mandi, Jammu.
3. Shri Nathu Ram S/o Shri Sanji Ram
R/o Gumat Bazzar, Jammu.
4. John Peter, Age 61 years, S/o Lt. Sh.
Yonus Masih R/o 20 Christian
Colony, Jammu
5. George Gill, Age 75 years, S/o Lt.
Sh. Babu Lal R/o New Christian
Colony, Vir Marg, Jammu.
6. Navneet Finance Co.
7. Mahajan Furnishings
8. Stephan Dry Cleaners
9. Tawi Furnitures
10. R. D. Brothers through Darshal Lal
Mahajan
11. Ishar Das S/o Sh. Ram Chand Prop.
Maha Shakti Transport Co.
12. M/S Kumar & Kumar Sports Nos.4
to 11 all Residents of Balmiki
Devasthan Premises, Opposite
Kahsmir Times, Office, Residency
Road, Jammu.

...Respondent(s)

Through :- Mr. Vikas Sharma, Advocate
Mr. Brij Mohan Gupta, Advocate

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Brief Facts:

- 01.** The instant petition under Article 227 of the Constitution of India has been filed by the petitioner, assailing the order dated 31.07.2025, passed by the learned 2nd Additional District Judge, Jammu in Civil Suit No. 10085CNRJKJ MO 20000011997, whereby the learned Trial Court declined to frame an additional issue relating to the alleged bar of the suit under Order II Rule 2 of the Code of Civil Procedure. The petitioner, who is the President of the Christian Beradri and a defendant in the said civil suit, submits that the claim for recovery of possession now sought by the plaintiffs (respondents herein) ought to have been claimed in their earlier suit, and having failed to do so, the present suit is barred by the principles underlying Order II Rule 2 CPC.
- 02.** The present dispute pertains to an immovable property claimed by two religious sects the Balmiki Hindus (represented by Respondents 1 to 3) and the Christian community (represented by the petitioner). The respondents 1 to 3 had previously instituted Suit No. 25/1973, titled *Mohan Lal Motyal & Others v. Faquira & Others*, seeking a declaration regarding their entitlement to compensation for a portion of the said property acquired by the State, which was decided on 31.12.1973 by the Court of learned Sub-Judge in favour of the respondents 1 to 3.

03. It is further relevant to observe that the legality of the decree and judgment passed in File No. 25 of 1973 titled *Mohan Lal Motiya & Ors. v. Fakira & Ors*, came to be assailed through a civil suit instituted in a representative capacity, titled *John Peter & Ors. v. Mohan Lal Motiya & Ors.*, under the provisions of Order I Rule 8 of the Code of Civil Procedure, before the Court of the learned City Judge, Jammu, registered as File No. 06/suit 1989. The said suit continues to remain pending adjudication before the aforesaid Court. It is in the course of those proceedings that petitioner No. 1 came to be transposed as one of the plaintiffs and is arrayed therein as plaintiff No. 3.

Arguments on behalf of Petitioner:

04. The petitioner has invited the attention of this Court to the grounds taken in the written statement filed by respondents 1 to 3, wherein, by way of preliminary objection, the maintainability of the suit instituted by the plaintiffs was questioned. It was specifically contended therein that the suit is not maintainable, being barred by the provisions of Order II Rule 2 of the Code of Civil Procedure.

05. Subsequently on the basis of the reply, the learned trial Court vide order dated 06.09.2000 initially framed as many as six issues which are reproduced as under:

- i) *Whether the plaintiffs' suit is liable to be wet in terms of section 10 of the CPC for the reasons that no suit titled John Peter and others vs Mohan Lal Mootiyal is already pending in the Court of City Judge, Jammu with regards to the same cause of action between the same parties? OPD 1 to 3.*
- ii) *Whether the plaintiffs' suit barred under Order 2 Rule 2 CPC, if so, how? OPD 1 to 3.*
- iii) *Whether the plaintiffs' suit is time barred, being out of possession and their title being denied by defendant Nos. 1 to 3 since the year 1970 and the defendants 1 to 3's rights have matured into the right of adverse possession? OPD 1 to 3.*

- iv) *Whether the suit is barred by Section 48 of the CPC, if so, how? OPD 1 to 3.*
- v) *Whether the suit is not properly valued and what shall be proper value? OPD 1 to 3.*
- vi) *Whether any relief under Order 1 Rule 8 CPC is required for filing the suit, if so, what is its effect thereon? OPD 1 to 3.*

06. The learned trial Court vide its order dated 13.05.2008, decided the preliminary issues so framed and particularly with respect to issue No. 2 the learned Additional District Judge, Jammu observed that ***“the contention raised on behalf of the plaintiffs is that the defendants, in order to substantiate their plea under Order II Rule 2 CPC, were required to place on record the pleadings of the previous suit. Without the pleadings of the earlier suit being produced, this issue cannot be effectively adjudicated. There is no dispute to the legal proposition that the pleadings of the previous suit must be brought on record in order to sustain an objection under Order II Rule 2 CPC. In the present case, the pleadings of the earlier suit have not been placed on record by the defendants. Accordingly, in the absence of such material, it cannot be said that the present suit is barred by the provisions of Order II Rule 2 CPC. This issue is, therefore, decided in favour of the plaintiffs and against the defendants”.***

07. Later on 17.08.2009, as many as six issues were framed by the trial Court. However, no specific issue with regard to the applicability of Order II Rule 2 CPC to the facts of the case was framed. This was for the reason that certain observations touching upon the said provision had already been made in the earlier order dated 13.05.2008. Consequently, those observations were treated as binding for the subsequent stage of the proceedings, thereby operating as *res judicata* inter proceedings.

08. The petitioner thereafter sought framing of an additional issue under Order XIV Rule 5 CPC, alleging that there was no final adjudication on the applicability of Order II Rule 2, and that the earlier order lacked the force of a reasoned legal finding.
09. Thus the learned Senior counsel Sh. P.N Goja appearing on behalf of the petitioner submitted that the earlier suit instituted by the respondents was one seeking declaratory relief and compensation but did not include a prayer for recovery of possession, which was a relief clearly available to them at that relevant point of time. It was argued that since the respondents/plaintiffs failed to claim possession in the earlier proceedings, they are now precluded from seeking such relief in the present suit by virtue of the bar imposed under Order II Rule 2 of the Code of Civil Procedure.
10. The learned counsel for the petitioner emphasized that the omission to claim possession, despite its availability as a consequential relief arising from the same cause of action, attracts the principles underlying Order II Rule 2 CPC, which mandates that all reliefs arising from the same cause of action must be claimed in one suit. Further, it was contended that the earlier order dated 13.05.2008, passed in the previous litigation, did not constitute a conclusive adjudication on the merits of the matter and, therefore, cannot operate as *res judicata* to bar the present proceedings. In addition, the learned counsel submitted that the trial court's refusal to frame an additional issue pertaining to the applicability of Order II Rule 2 CPC amounts to a denial of a fair and reasonable opportunity to adjudicate a vital legal objection. It was asserted that this omission has

resulted in substantial prejudice to the petitioner's case, as the core legal contention regarding maintainability of the suit remains unaddressed.

Arguments on behalf of Respondents:

11. Per contra, Mr. Vikas Sharma, Advocate has appeared on behalf of the respondents and has submitted that the present suit, filed by the plaintiff Deity, is not maintainable. It is further submitted that in an earlier suit titled *Mohan Lal Motial & Anr. v. Faqira & Ors.*, instituted by the devotees through a Samiti, a decree was obtained declaring that the property in question belonged to the Hindu (Balmiki) Devasthan and those devotees who had subsequently converted to Christianity had no right in the said property. The said decree was affirmed in appeal, and it was concurrently held that the compensation for acquisition of a portion of the land by the Collector was payable to the Devasthan/Temple and not to the Christian converts.
12. It is urged by the respondents that on the strength of the said findings, the plaintiff Deity instituted the present suit seeking mandatory injunction for possession and rendition of accounts against the defendants. The contesting defendants, however, raised preliminary objection and contested the suit on merits, inter alia, on the grounds that the earlier decree had been obtained fraudulently and that the previous proceedings were collusive in nature and the said decree is already under challenge in a separate suit filed by John Peter (defendant No.2) and Gorge Gill (defendant No.3), which is presently pending adjudication before the Court of the City Judge, Jammu.

13. The learned counsel has further relied upon the order of the learned trial court dated 13.05.2008, whereby preliminary issues were adjudicated. It is pointed out that issues Nos. 1, 2, 4 and 6 were decided in favour of the plaintiff and against the defendants, while issue No.3 (relating to limitation) and issue No.5 (relating to valuation) were kept undecided as they involved mixed questions of law and fact. Thereafter, vide order dated 17.01.2009, the trial court framed seven issues on facts, the parties led their evidence, and the matter has been fixed for final arguments.

Legal Analysis

14. I have heard learned counsel for the parties and perused the record and also the detailed synopsis given by both the parties.
15. The core issue in the present writ petition is whether the learned trial Court committed any jurisdictional error or procedural irregularity in refusing to frame an additional issue regarding the bar under Order II Rule 2 CPC.
16. In the present case, the learned Trial Court considered the said objection under Issue No. 2 which is apparent vide order dated 13.05.2008. The order further reveals that since the previous pleadings were not on record, it ultimately decided the issue against the petitioner. The contention of Mr. Goja that the said order is not a “final adjudication” cannot be accepted in light of the observation and finding recorded by the learned trial court after hearing both parties. Although the reasoning may be brief, it has the force of a binding decision, as the same has not been called in question by the petitioners at relevant stage and after having accepted the said finding recorded by the learned trial court ,

the petitioner is estopped under law to question the same at this belated stage.

17. “*Res judicata*” is a legal doctrine preventing parties from re-litigating the same cause of action, once, it has been finally decided by a competent court. *Order 2 Rule 2 CPC* allows the court to add or frame issues if a new cause of action arises after the institution of the suit, while *Section 10 Code of Civil Procedure*, bars suits that involve the same parties and cause of action pending in another suit. The petitioner’s defense essentially hinges on the contention that the present suit should not be entertained due to these legal bars arising from previous litigation.
18. Thus, the concept of “*res judicata inter proceedings*” even at interlocutory stages has been recognized by courts in India. Once an issue is framed, heard, and decided, it cannot be re-agitated under the guise of an “additional issue.”
19. On analysis, however, it becomes evident that the petitioners had several opportunities to address this concern before the learned trial court which has not been done. The record reflects that the issue was originally framed in 2000 and then deferred in 2008 due to the petitioners' own failure to place necessary documents from the 1973 suit on record. Despite this, the petitioners took no steps for over a decade to rectify the record or press for adjudication. The matter lay dormant until 2025, when the application for reframing was filed after an inordinate and unexplained delay. The trial court, therefore, cannot be faulted for concluding that the application lacked merit and that the issue had already been considered.

20. This Court after perusing the record finds no infirmity in the reasoning given by the learned Trial Court in its order dated 31.07.2025. As rightly noted therein, the learned Trial Court had, vide its earlier order dated 13.05.2008, framed six preliminary issues. Out of these, only Issue Nos. 3 and 5 were left undecided on the ground that they involved a mixed question of law and fact, and were therefore to be decided along with the main issues at the appropriate stage. Subsequently, by order dated 17.01.2009, after adjudication of the preliminary issues, the Trial Court proceeded to frame the remaining factual issues. However, the issues which had earlier been kept open namely Issue Nos. 3 and 5 were not expressly incorporated or substituted in the said order. The Trial Court, in order to rectify this omission and to clarify the record, rightly held that Issue Nos. 3 and 5, which were not decided earlier, stood substituted as factual Issue Nos. 6A and 6B in the order dated 17.01.2009. This Court concurs with the said finding and is of the view that it neither alters the scope of the trial nor prejudices the rights of the parties. Rather, it ensures continuity and procedural clarity in the adjudication of the issues already framed.
21. Therefore the learned trial court in order to set at right the controversy clarified that the issues no. 3 and 5 which were not decided vide order dated 13.05.2008 are substituted in the order dated 17.01.2009 as factual issue no.6A and 6B. With a view to make it more clear, Issue Nos.6A and 6B are reproduced as under:

Issue No. 6A (Earlier Issue No.3)

Whether the plaintiff suit is time barred, being out of possession and their title being denied by defendants no. 1 and 3 since the

year 1970 and the defendants 1 to 3's rights have matured into the right of adverse possession?

Issue No. 6B (Earlier Issue No.5)

Whether the suit is not properly valued and what shall be the proper value?

22. It is a well-settled principle of law that the supervisory jurisdiction under Article 227 of the Constitution is to be exercised sparingly and only in exceptional circumstances. This jurisdiction is intended to correct jurisdictional errors or prevent grave miscarriages of justice, not to serve as an alternative to appellate or revisional forums. Interlocutory matters such as the framing of issues are integral to the procedural framework under the Civil Procedure Code (CPC), and routine challenges to such orders are not ordinarily maintainable under Article 227.
23. Reliance is placed upon case titled ***Radhey Shyam v. Chhabi Nath***, reported in (2015) 5 SCC 423, the Hon'ble Apex Court underscored that ***Article 227 is not to be used as a substitute for appeal or revision, especially concerning interlocutory orders passed during trial, which generally do not invite writ jurisdiction.***
24. Similarly, in ***Estralla Rubber v. Dass Estate (P) Ltd.*** reported in (2001) 8 SCC 97, the Apex Court held that ***where the statute provides a specific remedy such as appeal or revision the parties must exhaust these statutory remedies before invoking writ jurisdiction. These precedents establish a clear procedural rule to discourage bypassing the hierarchical appellate process and maintain judicial discipline.***
25. Furthermore, as held in several authoritative judgments, including ***Sushil Kumar Mehta v. Gobind Ram Bohra***, reported in [(1990) 1 SCC 193],

Makhan Lal Bangal v. Manas Bhunia, reported in [(2001) 2 SCC 652],

the omission to frame a particular issue does not, by itself, invalidate the trial, especially where parties had an opportunity to present their evidence or arguments on the point in question. The courts have consistently maintained that Article 227 jurisdiction is not intended for correcting every procedural lapse or re-evaluating interlocutory orders, unless the impugned order results in a gross miscarriage of justice or a failure of jurisdiction. In the present case, no such exceptional circumstance is made out.

26. The impugned order refusing to frame an additional issue does not finally decide the rights of the parties. It is interlocutory, meaning it is a procedural order passed during the trial that regulates how the trial proceeds but does not conclusively determine the outcome.
27. Therefore, the observations made by the learned Trial Court that the earlier order would operate as *res judicata* are, therefore, well within the ambit of judicial discretion and legally sustainable and no such infirmity is made out in the impugned order. The learned Trial Court has exercised its discretion judiciously and in conformity with procedural law. The petitioners had both the opportunity and the responsibility to produce the necessary records and to diligently raise their objections at the appropriate stage during the trial proceedings. Their failure to do so, followed by a belated attempt to revisit and reopen settled issues, does not warrant the exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution. The present writ petition lacks merits and is liable to be dismissed.

28. In view of the foregoing discussion, the writ petition which is found to be devoid of any merit is, accordingly, ***dismissed***.

29. ***Disposed of.***

(WASIM SADIQ NARGAL)
JUDGE

JAMMU

11.09.2025

Vijay

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No

