

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

CM(M) No. 244/2025
CM No. 5460/2025

Abhilasha Sharma & Anr.

.....Petitioner(s)

Through: Mr. Ajay Bakshi, Advocate.

Vs

Pappu Ram & Ors.

..... Respondent(s)

Through:

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
04.09.2025

1. The petitioners, through the medium of present petition, have challenged order dated 01.08.2025 passed by learned Munsiff, Akhnoor whereby an application of petitioner No. 1/plaintiff seeking implementation of the interim order dated 31.05.2023 has been dismissed.

2. Heard learned counsel for the petitioners and perused record of the case.

3. It appears that petitioner No. 1 has filed a suit before the learned trial court against the respondents/defendants seeking a permanent prohibitory injunction restraining the respondents/defendants from causing any type of interference into the land measuring 1 kanal 12 marla comprised in khasra No. 2471 min, 3 kanals 5 marlas comprised in khasra No. 2131 situated at Sungal, Tehsil Akhnoor.

4. In the plaint, it was pleaded by the plaintiffs/petitioners that their predecessor-in-interest had purchased the aforesaid land by way of a registered sale deed, whereafter, mutation was attested in their favour. It was also pleaded that they are owners in cultivating possession of the suit land but the defendants, who have no right and title/claim to the suit property are threatening to dispossess them from the suit land.

5. It appears that in their written statement, the defendants have admitted the possession of the plaintiffs over the suit land and have stated that they have never tried to dispossess the plaintiffs from the suit land. It has been pleaded that plaintiff No. 1 has re-married and she is living in a different village at present. It was also pleaded by the defendants that the plaintiffs are not the only owners of the suit land but even the mother of the deceased husband of the plaintiff No. 1 is co-owner of the suit land.

6. It appears that the trial court, vide interim order dated 31.05.2023, temporarily restrained the defendants from interfering with the possession of the plaintiffs of the suit land. The said order is stated to be still subsisting. It also appears that the plaintiffs filed an application seeking implementation of the aforesaid order, as according to them, in their absence, the defendants have trespassed into the suit land and have cultivated the said land forcibly in the absence of the plaintiffs.

7. The learned trial court has, while dismissing the aforesaid application of the plaintiffs, presumed that the plaintiffs have been dispossessed from the suit land on the basis of the averments made by the plaintiffs in the application seeking implementation of the order. Accordingly, the learned trial court has refused to implement order dated 31.05.2023 as according to the learned trial court, the plaintiffs are trying to recover the possession of the suit land under the garb of interim order dated 31.05.2023.

8. I am afraid the view taken by the learned trial court is not sustainable because a casual act of trespass by the defendants into the suit land does not amount to ouster of the plaintiffs from the possession of the said land. In the interim order dated 31.05.2023, it has been specifically provided that the land in question is in possession of the plaintiffs and it is for this reason that the defendants were restrained from interfering in their possession and even in the written statement filed by the defendants, they have pleaded that they are not trying to dispossess the plaintiffs. In the face of these pleadings and the material on record, the learned trial court could not have refused to implement order dated 31.05.2023 merely because there was a casual act of trespass on the part of the defendants on the suit land.

9. The learned trial court has by refusing to implement order dated 31.05.2023, failed to exercise its jurisdiction under Order 39

Rule 2(A) of the Code of Civil Procedure, 1908 which provides for the mechanism to deal with instances of breach of interim injunction.

10. For the foregoing reasons, the impugned order passed by the learned trial court is grossly erroneous which has resulted in failure of justice and, as such, the same deserves to be set aside.

11. Accordingly, the impugned order dated 01.08.2025 passed by the learned Munsiff Akhnoor is set aside and the matter is remanded to the learned trial court with a direction to pass fresh order on the application of the petitioners for implementation of order dated 31.05.2023 after hearing both the parties. The needful shall be done most expeditiously.

12. Disposed of, accordingly.

13. A copy of this order be sent to learned Munsiff Akhnoor for information and necessary action.

(SANJAY DHAR)
JUDGE

JAMMU
04.09.2025

Shivalee

Whether the order is speaking: Yes
Whether the order is reportable: No