

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

Case No. CR No. 38/2025

CM No. 6359/2025

CM No. 6393/2025

Date of pronouncement:- 10.10.2025

Date of uploading:- 15.10.2025

Surjit Singh

.....Petitioner(s)

Through: Mr. Tushar Kalsotra, Advocate
Mr. Nitesh Jandial, Advocate.

Vs

Joraveer Singh.

..... Respondent(s)

Through:

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

(ORDER)

1. The petitioner, through the medium of present petition, has challenged order dated 23.08.2025 passed by learned Munsiff, Bishnah, whereby preliminary issue with regard to maintainability of the suit has been decided against the petitioner/defendant.

2. Heard and considered.

3. It seems that the respondent/plaintiff has filed a suit before the trial Court against the petitioner/defendant seeking permanent prohibitory injunction restraining him from interfering in his physical possession of land measuring 02 kanals 07 marlas

comprised in khasra No. 222 min situated at village Sarore, Tehsil Bishnah. It has been pleaded that the suit land was in exclusive share and possession of Harnam Singh who executed a gift deed dated 02.01.2009 in favour of the respondent/plaintiff in respect of the said land which was registered before the Sub Registrar, Bishnah. It has been submitted that after the registration of the gift deed, mutation No 246 came to be attested in favour of the respondent/plaintiff and his name has been reflected in the khasra girdawari for Rabi, 2009. It has been pleaded that the respondent/plaintiff is trying to forcibly dispossess the petitioner/plaintiff from the suit land in illegal and unlawful manner.

4. The petitioner/defendant has filed his written statement in which he raised a preliminary objection with regard to maintainability of the suit on the grounds that possession of the suit land is not with the plaintiff hence, the suit for injunction would not lie. It has been further contended in the written statement that the suit land is agricultural land and mutation under Section 4 of the Agrarian Reforms Act has been attested in respect of the said land, which is under challenge before the Joint Agrarian Reforms Commissioner, Jammu who has directed maintenance of status quo on spot. It has been contended that the civil Court has no jurisdiction to entertain the suit. According

to the petitioner/defendant, gift deed dated 02.01.2009 has been executed contrary to the provisions of Agrarian Reforms Act and as such, the same is a sham document. It has been further contended that out of land measuring 02 kanals 07 marlas falling in khasra No. 222 min, 14 marlas of land have been acquired by the Irrigation Department and the compensation has been paid to the ancestors of the defendant, whereas, rest of the suit land is in peaceful physical possession of the defendant.

5. On the basis of the pleadings of the parties, the learned trial Court vide order dated 06.08.2025 framed issues and one of the issues that was framed was with regard to the maintainability of the suit. The said issue was treated as preliminary issue and the parties were directed to advance arguments with respect to the said issue. The learned trial Court after hearing the parties, came to the conclusion that the petitioner/defendant has not raised any issue which is triable by the revenue authorities under the Agrarian Reforms Act. Therefore, jurisdiction of the civil Court to decide the suit is not barred.

6. The petitioner/defendant has challenged the impugned order on the grounds that the gift deed alleged to have been executed in favour of the respondent/plaintiff in respect of the suit land is void because the same has been executed contrary to the provisions of Section 28-A of the J&K Agrarian Reforms Act. It

has been further contended that the issue with regard to the validity of the gift deed has not been framed by the learned trial Court. It has also been contended that the respondent/plaintiff is not in possession of the suit land and that the same is in his possession. Therefore, such a dispute could have been only decided by an authority under the Agrarian Reforms Act. It has been contended that the suit is expressly barred by the provisions contained in Section 19 & 25 of the Agrarian Reforms Act.

7. Section 25 of the Agrarian Reforms Act creates bar to the jurisdiction of civil Court for settling, deciding or dealing with any question or any matter arising under the said Act or the Rules framed thereunder. It further provides that an order of an officer or authority under the said Act cannot be called in question before any civil Court. The issue that is required to be considered is as to whether the controversy involved in the present suit is eligible to be determined by an authority under the Agrarian Reforms Act.

8. Section 19 of the Agrarian Reforms Act deals with the powers of the revenue officers. Sub Section (3) of Section 19 of the J&K Agrarian Reforms Act gives illustrations of the nature of the applications and suits that can be disposed of by a Collector. These include proceedings under Section 56 of the J&K Tenancy Act, proceedings under Sub Section (2) of Section 68-A of J&K

Tenancy Act, proceedings under Section 24 of J&K Big Landed Estates Abolition Act, 2007, application by an owner against a person claiming to be a tenant, all other cases of dispute including those where a party claims adverse possession against the recorded owner or intermediary.

9. In the present case, none of the aforesaid disputes is subject matter of determination before the learned trial Court. The respondent/plaintiff claims himself to be in the physical possession of the suit land and he is seeking an injunction against the petitioner/defendant, who according to him is trying to interfere in his possession. The respondent/plaintiff, in order to support his case is relying upon gift deed dated 02.01.2009, the entries in the khasra girdawari and the mutation attested in his favour. The contention of the petitioner/defendant that the gift deed is a sham document and it is actually he, who is in possession of the suit land, can be determined only after the trial of the case and not at this stage. *Prima-facie*, the respondent/plaintiff has placed on record documents which show that he has title to the suit land and he is also in possession of the same. Therefore, as per the illustrations given by this Court in the judgment titled **“Jagtu Vs. Badri and ors.” (AIR 1980 J&K 1)** the suit of present nature is cognizable by the civil Court.

Thus, the learned trial Court has not committed any illegality while passing the impugned order.

10. For the foregoing reasons, I do not find any ground to interfere in the order passed by the learned trial Court. Accordingly, the petition is dismissed. However, if after trial of the suit, it is found that the plaintiff is not in possession of the suit land, it shall be open to the learned trial court to hold the suit as non-maintainable. The petitioner/defendant shall also be at liberty to move the trial court for framing of any additional issue that may arise from the pleadings of the parties.

11. Disposed of.

JAMMU
10.10.2025
Tarun/PS



(SANJAY DHAR)
JUDGE

Whether order is speaking: Yes

Whether order is reportable: No