

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

CM(M) No.343/2025

Date of pronouncement : 23.12.2025

Uploaded on : 26.12.2025

Mohd Qasim

....Petitioners

Through:- Mr. Shray Bakshi, Advocate with
Mr. Vivek Jamwal, Advocate

V/s

Shamsh Din

.....Respondents

Through:-

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

1. The petitioner, through the medium of present petition under article 227 of the Constitution of India, is seeking examination of legality and validity of an order dated **06.10.2025** passed by the court of learned Munsiff, Bani whereby a civil suit preferred by the petitioner for declaration with consequential relief has come to be held not maintainable by reference to preliminary issue framed in the suit.
2. The suit has been held non-maintainable on the ground of limitation.
3. The suit filed by the petitioner on file **No.11/Civil Suit of 2022** instituted on **17.08.2022** before the

court of learned Munsiff, Bani, Kathua was for declaration that Will Deed dated **23.07.1996**, which was allegedly executed by the petitioner's father-Yousuf, is null and void with consequential relief of permanent prohibitory injunction restraining the defendant, the alleged beneficiary of the Will who is said to be a stranger to the petitioner's father, from interfering in the property forming subject matter of the Will Deed.

4. In the plaint, the petitioner came to plead that his father expired in the year 2007.
5. The cause of action for the petitioner to file the civil suit is said to have accrued when on the basis of said alleged Will Deed, the respondent is said to have got mutation **No.1391/2022** attested in his name as against mutation of inheritance **1176/2007**, attested in favour of the petitioner qua the estate of his father.
6. Thus, the institution of the civil suit for seeking the declaration with respect to the Will is purportedly drawn from cause of action from the date of attestation of **mutation No.1391/2022**.
7. The petitioner being rendered non-suited in his own lis is seeking indulgence of this Court.

8. The petitioner's predicament is that dismissal of his suit has not been put into a decree for the petitioner to assail it in a civil first appeal under section 96 of the Code of Civil Procedure, 1908 (CPC) given the fact that the suit of the petitioner has been dismissed that per se qualifies the order dated **06.10.2025** to be an appealable order under section 96 read with Order XLI of CPC.
9. This Court, therefore, grants liberty to the petitioner to prefer a civil first appeal before the court of Principle District Judge, Kathua within a period of next 30 days.
10. Status quo to be maintained with respect to the suit property till filing of the appeal within time hereby granted whereupon appellate court to consider on its merits an application for temporary injunction, if any, filed in relation to the suit document/property from the end of the appellant.

11. Disposed of.

(RAHUL BHARTI)
JUDGE

JAMMU
23.12.2025
Sneha

Whether the judgment is speaking: Yes/No

Whether the judgment is reportable: Yes/No