

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

*Reserved on: 28.11.2025*

*Pronounced on: 11.12.2025*

*Uploaded on: 11.12.2025*

*Whether the operative part  
or full judgment is  
pronounced: **Full***

**CM(M) No.79/2025**

**IQBAL RASHID NOWSHEHRI**

...PETITIONERS/APPELLANT(S)

Through: - Mr. Syed Faisal Qadiri, Sr. Advocate, with  
Mr. Numan Zargar, Advocate.

Vs.

**RUBEENA SHAHEEN & ORS.**

...RESPONDENT(S)

Through: - Mr. T. H. Khawaja, Sr. Advocate, with  
Mr. Iman Abdul Moiz, Advocate-for R1.  
None for R2 to R6.

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

**JUDGMENT**

**1)** The petitioner, through the medium of present petition, has challenged order dated 11.02.2025 passed by the learned Civil Judge Senior Division (Chief Judicial Magistrate), Srinagar, whereby application preferred by the petitioner under Order I Rule 10 of CPC has been dismissed.

**2)** It appears that the contesting respondent No.1 (hereinafter referred to as "the plaintiff") has filed a suit against respondent Nos.2 to 6 (hereinafter referred to as "the defendants") before the Court of learned Civil Judge Senior

Division (Chief Judicial Magistrate), Srinagar ( hereinafter referred to as “the trial court”) seeking a decree of mandatory injunction commanding the defendants to issue Fardi Intikhab (revenue extracts) for alienation of the property comprising 02 kanals, 19 marlas and 240 Sq.ft of land and a double storeyed house with two annexes under Khasra Nos.2565/131, 2565/1331, 2156/1332 and 1976/133 situated at Salman Farsi Heights, Ishber Nishat in Estate Guptganga Tehsil North, District Srinagar (hereinafter referred to as “the suit property”). In the plaint, the plaintiff has claimed that she is recorded and registered owner of the suit property and that she intends to sell the said property to a prospective buyer regarding which she has entered into an agreement to sell. It has been pleaded that the plaintiff had applied for issuance of Fard (revenue extracts) before the defendants for the purpose of alienating the suit property but the defendants without any justification are not issuing the same in her favour.

3) During pendency of the suit, the petitioner herein filed an application under Order I Rule 10 CPC before the learned trial court seeking his impleadment as defendant to the suit. In his application the petitioner claimed that he is owner of 05 kanals and 05 marlas of land out of which the plaintiff along with her representatives has encroached upon

approximately 07 marlas of land. It has been submitted that the plaintiff intends to dispose of the suit property along with 07 marlas of land which she has encroached upon. It has been further submitted that in a previous litigation between the parties, the plaintiff has admitted that she is owner of only 02 kanals, 19 marlas and 240 Sq.ft of land, as such, she is obliged to hand over possession of rest of the land which is under her occupation. It has been submitted that the petitioner approached the Divisional Commissioner, Kashmir, who, vide order dated 03.01.2022, directed the Tehsildar North to retrieve the excess land from the plaintiff and hand over the same to the petitioner, whereafter the petitioner approached the Tehsildar concerned for implementation of the order of the Divisional Commissioner but the matter remained pending and till today, the land in question has not been retrieved. It has been submitted that as per the demarcation conducted by the revenue authorities, the plaintiff is in possession of excess land of 07 marlas which needs to be retrieved as per the order passed by the Divisional Commissioner but instead of complying with the said order, the plaintiff is attempting to alienate the suit property and under that garb, she is attempting to transfer possession of the encroached portion of the property as well. On these grounds, the petitioner had sought his impleadment as party to the suit.

4) The learned trial court has, after hearing the parties, passed the impugned order dated 11.02.2025, whereby application of the petitioner has been rejected. While doing so, the learned trial court has observed that just because the process of recovery of excess land has been initiated by the revenue authorities, will not give a cause to the petitioner to be impleaded as a party to the suit. It has been further observed by the learned trial court that the petitioner is neither a necessary nor a proper party to the suit, as such, he cannot be impleaded as a defendant to the suit.

5) The petitioner has challenged the impugned order by way of the present petition under Article 227 of the Constitution of India on the grounds that the learned trial court has committed a fundamental jurisdictional error while rejecting application of the petitioner as the petitioner is a necessary and proper party to the suit. It has been further contended that the learned trial court has exceeded its jurisdiction by interfering in the matters which are exclusively within the domain of the revenue authorities. It has been contended that the order of the trial court whereby the defendants have been directed to issue Fard in favour of the plaintiff is an impermissible encroachment upon the functions of the revenue authorities. It has also been contended that if the plaintiff succeeds in alienating the

encroached land or in creating third party interest, it will be difficult for the petitioner to retrieve the said portion of the property.

6) I have heard learned counsel for the parties and perused record of the case.

7) Order I Rule 10(2) of the Code of Civil Procedure vests power with the court to strike out or add parties. It provides that the court may join any person as a party to the suit, whether as plaintiff or defendant, whose presence before the court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit. Thus, a court is vested with power to join a person as a party if the said person is a necessary party to the suit and if without the presence of such party the questions involved in the case cannot be adjudicated upon completely. The test for determining whether a person is a necessary party in a suit or not is whether the suit can proceed without the presence of such party and in case a decree is passed in the suit, whether such decree can be executed in the absence of such party.

8) Reverting back to the facts of the present case, the plaintiff in the suit is seeking a decree of mandatory injunction against the defendants commanding them to issue

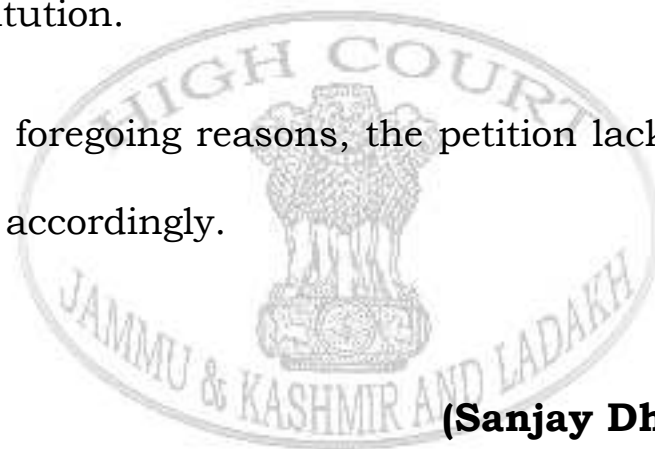
revenue extracts in respect of the suit property for the purposes of alienation of the suit property. The plaintiff has not claimed any relief against the petitioner. It is worth-while to mention here that in the suit, the plaintiff is seeking revenue extracts in respect of land measuring 02 kanals, 19 marlas and 240 Sq.ft in the suit survey numbers. It is not in dispute that the land measuring 02 kanals, 19 marlas and 240 sq.ft falls to the share of the plaintiff. The grievance of the petitioner is that the plaintiff, besides being in possession of the aforesaid land, is also in possession of 07 marlas of land in excess which belongs to the petitioner. However, the plaintiff is not seeking issuance of Fard/revenue extracts in respect of the alleged encroached portion of the land. She is only seeking Fardi Intikhab in respect of portion of the land which, admittedly, belongs to her. Thus, none of the rights of the petitioner is going to be infringed if the suit of the plaintiff is decreed against the defendants and they issue the revenue extracts in respect of the suit land in favour of the plaintiff.

9) The petitioner apprehends that under the garb of sale of her portion of the land, the plaintiff may also sell/transfer the possession of alleged encroached portion of the land in favour of the proposed purchaser. Even if the plaintiff does so, the petitioner would have a cause of action against the proposed purchaser in respect of the portion of land which does not

belong to the vendor. The remedy for the petitioner is to seek recovery of possession of encroached 07 marlas of land from the plaintiff or from her successor-in-interest and not by seeking his impleadment in the suit, in which he is neither a necessary nor a proper party.

**10)** For what has been discussed hereinbefore, this Court does not find that it is a case where the learned trial court has either exceeded its jurisdiction in passing the impugned order or that it has committed any grave illegality, which is *sine qua non* for exercising supervisory jurisdiction under Article 227 of the Constitution.

**11)** For the foregoing reasons, the petition lacks merit and is dismissed accordingly.



**(Sanjay Dhar)  
Judge**

**SRINAGAR**

**11.12.2025**

“Bhat Altaf-Secy”

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|---------------------------------------------|------------|
| Whether the <b>Judgement</b> is speaking:   | <b>YES</b> |
| Whether the <b>Judgement</b> is reportable: | <b>YES</b> |