

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

**FAO 6/2024
CM(945/2024)**

Mst. Mugli And Ors.

...Petitioner(s)

Through: Mr. M.M. Dar, Advocate with
Ms. Saiqa Dawood, Advocate

Vs.

Ghulam Ahmad Ahanger and Ors.

...Respondent(s)

Through: Mr. Syed Manzoor, Advocate

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

19.09.2025

1. The respondents No. 1 to 5 herein, as plaintiffs, came to commence a civil suit for partition, permanent and mandatory injunction and also for a declaration sought with respect to the estate of one Mohammad Sultan Ahanger as is forthcoming from the plaint accompanying the present writ petition.
2. In the suit, the respondents No. 1 to 5, as plaintiffs, came to name 17 defendants at first instance.
3. The institution of the suit is of **16.06.2009**, when in response to a temporary injunction application under Order 39 Rule 1 & 2 of the Jammu

& Kashmir Code of Civil Procedure, Svt. 1977, the trial court of learned Principal District Judge, Budgam came to direct originally named defendants not to alienate the suit property in question and also not to raise any construction thereupon.

4. Said interim ex-parte direction in terms of order dated **16.06.2009** was subject to objections from the defendants' end.

5. This order dated **16.06.2009** came to be made absolute in terms of an order dated **30.09.2011**.

6. It is in the year 2016 that the petitioner No. 1 herein-Mst. Mugli, daughter of deceased son of said estate holder Mohammad Sultan Ahanger, had come forward with an application seeking her impleadment in the suit as one of the defendants, reckoning herself to be a necessary party.

7. Said application was filed on **26.12.2016** which came to be allowed by virtue of an order dated **05.07.2017** by the court of learned Principal District Judge, Budgam.

8. By reference to the application of the petitioner No. 1 for impleadment, the court of learned Principal District Judge, Budgam not only impleaded the

petitioner No. 1 but also some other necessary parties who otherwise were left out of the suit, and those parties came to be referred to in the order dated **05.07.2017**.

9. Because of order dated **05.07.2017**, the array of the defendants from the original number of 17 inflated.

10. As borne out from the record of this case, perhaps the respondents No. 1 to 5, as the plaintiffs, have not carried out due compliance of the order dated **05.07.2017** passed by the court of learned Principal District Judge, Budgam whereby the respondents No. 1 to 5 as plaintiffs have been commanded to come up with an amended plaint as per the mandate of order dated **05.07.2017**. This position is reflected from the order dated **23.02.2019** of the court of learned Principal District Judge, Budgam.

11. Be that as it may, the petitioner No. 1, as an impleaded defendant in the suit, joined by the petitioners No. 2 to 4 who otherwise *per se* do not figure in the suit as a party defendants, preferred an application for seeking permission of the trial court to undertake construction of a cowshed and a single-story residential house.

12. This application was filed on **11.03.2023** and came to suffer rejection in terms of an order dated **07.08.2023** which now has become the subject matter of challenge in the present petition which is a civil miscellaneous appeal purportedly by reference to Order 43 Rule 1(R) of the Jammu & Kashmir Code of Civil Procedure, Svt. 1977.

13. A perusal of the impugned order would show that the court of learned Additional District Judge (Fast Track), Budgam, before which suit later came to have been transferred, has acted on the premise that since the petitioner No. 1 as an applicant and as a party to the suit is in the purported status of co-sharer of the said property, as such, the petitioner No. 1 cannot be exempted from the effects of the injunctory order dated **30.09.2011**.

14. If the premise relied upon by the learned Additional District Judge (Fast Track), Budgam is to be taken as correct, then in any given civil suit where a temporary injunction order is passed later on followed by impleadment of a necessary party as a defendant, it would then mean that said newly impleaded defendant would have to bear the burden of temporary injunction passed under Order 39 Rule 1 &

2 of the Jammu and Kashmir Code of Civil Procedure, Svt. 1977 (now Code of Civil Procedure, 1908) without having had the opportunity of putting up his/her case in response to the temporary injunction application. This cannot be the spirit of the procedural law, that too when it comes to matters of adjudication of civil suits.

15. In the light of the aforesaid, this Court finds the reasoning of the learned Additional District Judge (Fast Track), Budgam seriously flawed which warrants to be set aside and consequently the order dated **07.08.2023** is set aside with a consequent direction to the learned Additional District Judge, Budgam to first check whether the petitioner No. 1 as a defendant impleaded in the suit has filed her written statement or not and has also filed objections to the temporary injunction application or not.

16. If the petitioner No. 1 has filed her written statement in the civil suit, whether jointly or individually, then the court of learned Additional District Judge Fast Track), Budgam shall take up the application of the petitioner No. 1 for adjudication on merits by reckoning the application of the petitioner

No. 1 as a one under Order 39 Rule 4 of the Jammu and Kashmir Code of Civil Procedure, Svt. 1977.

17. It is further made clear that in case if co-petitioners No. 2 to 4 are also the party defendants in the civil suit, they shall also be reckoned as co-applicants with the petitioner No. 1 in the context of the application to be disposed of by the court of learned Additional District Judge (Fast Track), Budgam within a period of two months from the date a copy of this order is served upon the court.

18. **Disposed of.**

19. A copy of this order be served to the court of learned Additional District Judge (Fast Track), Budgam.

(RAHUL BHARTI)
JUDGE

SRINAGAR:

19.09.2025

"Mir Arif"