

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RSA 4/2024 CM(1145/2024).

TAJA.

...Petitioner(s)

Through: Mr. M. R. Thakur, Advocate.

VERSUS

FATA AND OTHERS.

Through: Mr. Wani Jahangir, Advocate for R1 and R2.

...Respondent(s)

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE.

ORDER
09.09.2025

1) A civil suit bearing **File No. 16/N** instituted on **13.09.2006** before the Court of learned Sub Judge, Bijbhera came to be commenced by the respondent No. 1-Mst Fata as plaintiff against five defendants.

2) Defendants No. 1 to 3 were real sisters of the respondent No. 1 whereas defendants No. 4 and 5 being minor children of a predeceased sister- Mst Mubeena.

3) The decree was sought in the following manner:

*i) A decree for declaration declaring that
the plaintiff to be the owner of half of the*

landed property left by Mst.Khati Khana Nishin Daughter of Mst.Khurshi under Khewat No. 28 comprising of Khata Numbers 107 to 111 and under Khewat No. 29 comprising of Khata Numbers 112 to 114 situated in Village Semthen Tehsil Bijbehara.

ii) A decree for Permanent Injunction restraining the defendants from permanently interfering with peaceful possession, occupation and enjoyment of plaintiff over the suit land be passed in favour of plaintiff and against defendants.

iii) Any other decree, Order or relief which this Hon'ble Court may in the Circumstances of the case be pleased to grant may also be granted in favour of plaintiff and against the defendants.

4) The dispute forming the subject matter of the civil suit was the inheritance of Mst. Khati, the

mother of the plaintiff and the defendants 1 to 3 and the grandmother of defendants 4 and 5.

5) The suit came to be contested, as is confirmed from the number of issues framed in the civil suit which are reproduced hereinabove:

1. *Whether the plaintiff and the mother of the defendants 4 and 5 were married as Khananasheen by their parents during their life time? OPP*
 2. *Whether the plaintiff and the mother of defendants 4 and 5 Mst. Mubeena were residing in their parental home till the death of their parents? OPP*
 3. *Whether the mother of the plaintiff and the grandmother of the defendants 4 and 5 Mst. Khati has executed a Will Deed on 6th of June 1991? OPP*
 4. *Whether the Will deed allegedly executed by Mst. Khati is false and fabricated and has been*
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manufactured by husband of the plaintiff to grab the share of the answering defendants ?

OPD

5. Whether the parties are governed by customary law? OPD

6. In case the issue No.1 is proved in affirmative whether the plaintiff is entitled to ½ share of the property under Khawat No. 28 Khata No.107 to 111 and Khewat No.29 and Khewat No. 112 to 114 falling under different Khasra numbers situated at village Semthan Tehsil Bijbehara.? OPP

7. Whether the mother of the plaintiff and grandmother of the defendants 4 and 5 was having authority to declare the plaintiff and mother of the defendants 4 and 5. Mst. Mubeena as Dukhtari Khananasheen through Will deed.? OPP

*8. Whether the plaintiff has any cause of action
against the defendants..? OPP*

6) During the pendency of the civil suit, the Jammu and Kashmir Muslim Personal Law (Shariat) Application Act, 2007 came into force on **26.02.2007** in terms whereof the custom based rights related to succession/inheritance amongst Muslims in Kashmir in particular came to be abolished.

7) All questions regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any provision of personal law, marriage, dissolution of marriage, including talaq, ila, zihar, lain, khula and mubaraat, dower, guardianship, gifts, trusts and trust properties were brought to be determined as per the Muslim Personal Law (Shariat) Application Act, 2007.

8) The Court of Sub Judge, Bijbehara taking cognizance of the fact that said Act had a direct effect on the very basis of the civil suit filed by the respondent No. 1 came to dismiss the suit by judgment and decree

dated **10.06.2015** holding that the respondent No.

1- Mst Fata as being plaintiff ceased to have any cause of action after coming into force of the Muslim Personal Law (Shariat) Application Act, 2007 to continue with the suit and thus left the rest of the issues untouched and undealt with.

9) Against the dismissal of her suit on the said premise by the Court of learned Sub Judge Bijbehara, respondent No. 1- Mst Fata, as plaintiff, preferred a civil first appeal bearing **File No. 07/Appeal** on **07.07.2015** before the Court of Principal District Judge, Anantnag which, by virtue of an order dated **07.11.2013**, set aside the judgment and decree dated **10.06.2015** of the Court of Sub Judge, Bijbehara and remanded the matter to the Trial Court of Sub Judge, Bijbehara for adjudication of the remaining issues framed in the case.

10) It is against the aforesaid outcome of the civil first appeal, that the appellant- Mst Taja, who otherwise was the defendant No. 2 in the civil suit, has come forward purportedly invoking Section 100 of the J&K Code of Civil Procedure Svt., 1977, as the

origin of the civil suit had taken place under the aegis of the Jammu and Kashmir Code of Civil Procedure Svt., 1977 and therefore has to continue to its final culmination in a civil second appeal.

11) The present appeal cannot be treated and entertained under Section 100 of the J&K Code of Civil Procedure Svt., 1977 as a civil second appeal on account of the fact that impugned order dated **07.11.2023** passed by the Court of learned Principal District Judge, Anantnag is in exercise of jurisdiction under Order 41 Rule 23 of the Jammu and Kashmir Code of Civil Procedure Svt., 1977 which is an appealable order under Order 43 Rule 1(u) of the J&K Code of Civil Procedure Svt., 1977.

12) Thus, there is no need for this Court to contemplate framing of any question of law under the purported title of the present appeal as one under Section 100 of the J&K Code of Civil Procedure Svt., 1977.

13) Upon perusal of the impugned order passed by the Principal District Judge, Anantnag, this Court is convinced that the learned Appellate Court has

simply reminded, though without saying so, the learned trial court about its obligation in terms of adjudication envisaged under Order 20 Rule 5 of the J&K Code of Civil Procedure Svt., 1977 which mandates that in a civil suit in which issues have been framed, a trial court shall state its finding or decision with reasons therefor upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

14) Considering the nature of the issues involved and framed in the civil suit, although no such issue was framed in the civil suit with respect to the effect of the coming into being of the Muslim Personal Law (Shariat) Application Act, 2007 on the maintainability of the civil suit filed by the respondent No. 1, yet the trial court purportedly drew reference from the said Act and held the suit to be not maintainable without there being any issue framed to that extent.

15) It is here that the trial court should have put itself to labour to come forward with adjudication of all the eight issues while retaining the discretion to

determine the fate of the suit by reference to the Act as well.

16) Since the trial court left the issues un-dealt with while the evidence in the case had been led from both sides, as such the adjudication made by the Court of Principal District Judge, Anantnag cannot be found faulty so as to suffer any indulgence from this Court in terms of appellate jurisdiction under Order 41 Rule 1(u) of J&K Code of Civil Procedure Svt., 1977.

17) Therefore this appeal is held to be without merit.

Dismissed.

18) The case shall stand remanded to the trial court of the Sub Judge, Bijbehara which shall take up the hearing of the case in the light of the remand directions passed by the Principal District Judge, Anantnag and dispose of the civil suit within a period of next three months from the date of receiving a copy of this order to be forwarded by the Registrar Judicial, Srinagar.

19) Parties are directed to appear before the Court of the learned Sub Judge, Bijbehara on **30th of September, 2025.**

20) The Court of learned Sub Judge, Bijbehara shall serve afresh the other parties except the respondent No. 1- Mst Fata who is the plaintiff and the defendant No. 2- Mst. Taja who is appellant herein.

(Rahul Bharti)
Judge

SRINAGAR
09.09.2025
Bisma Jan.

