

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

MA No.156/2014 IA No.01/2014 [493/2014]

Mst. Zaina and Ors.

...Petitioner/Appellant(s)

Through: Mr. M. A. Makhdoomi, Advocate.

Vs.

Mst. Raja and Another

...Respondent(s)

Through: None.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

09.10.2025

(ORAL)

1. In the instant appeal, the appellant herein has challenged order dated 28-07-2014 passed by the court of Principle District Judge Anantnag, in a suit titled as "Mst. Raja Vs. Mst. Rehmati and Ors".

2. Facts emerging from the record would reveal that respondent herein filed a suit against the defendants appellants herein for declaration and injunction on the premise that she is the sole owner in possession of suit property having vested unto her being a Khana Nisheen Daughter pursuant to a declaration made by her father and mother on 17th of Jamde-ul-Sane 1399 (Hijri Calender), being the fifth daughter of the father, namely Ghulam Qadir Ahangar and the defendants appellants herein the other four daughters and.

3. The defendants appellants herein in the written statement filed to the said suit denied the pleas raised by the plaintiff respondent herein stating therein that the suit property is their ancestral property having a right to inherit the same along with the plaintiff respondent herein upon the death of

their father and claiming the aforesaid declaration dated 17th of Jamde-ul-Sane 1399 to be an outcome of fraud. A counter claim as well came to be lodged in the written statement by the defendants appellants herein seeking a decree qua partition of suit property.

4. During the pendency of the suit and the application for interim relief, the defendants appellants herein moved an application before the trial court for appointment of a receiver of the suit property on the premise that the suit property is being wasted inasmuch as portion thereof alienated as well by the plaintiff respondent herein. The said application came to be contested by plaintiff/respondent herein whereupon the trial court in terms of impugned order dismissed the said application holding that the application does not fall within the purview of Order 40 CPC, however, qualifying it that the order shall not affect the rights of the parties for appointment of a receiver on fresh grounds in view of any other evidence that may come in the hands of the parties.

5. The defendants appellants herein have challenged the impugned order on the premise that the same has been passed by the triad court in disregard of the principles qua the appointment of, a receiver, and that the trial court has also overlooked the laws of the Apex Court cited in this regard.

Heard and perused the record.

6. None has chosen to appear on behalf of respondents on two previous dates, and none appears today as well on behalf of the said respondents.

7. Before proceeding to advert to the legality or otherwise of the impugned order, it would be appropriate and advantageous to refer to the nature and scope of the provisions of Order 40 CPC being relevant and germane to the controversy herein.

Order 40(i) CPC expressly provides for an appointment of a receiver over a property whether before or after decree while providing that a court can by an order confer upon the receiver of power of realization, management, protection, preservation and improvement of a property which is subject matter of dispute and a court is entitled to appoint a receiver when it appears to be “just and convenient” and can also remove any person of the possession or custody of a property and commit such property to the possession, custody or management of a receiver and upon appointment, such a receiver has full power in respect of such property.

Order 40(1)(2) CPC, however, prohibits the court from removing the possession or custody of any property in any person which is not the property involved the suit.

Besides, it is the consistent view of the courts that the appointment of a receiver under Order 40 CPC is in the discretion of the court and is required to be exercised on sound judicial principles, keeping in view the facts and circumstances of each case while protecting the rights of the parties and in the larger interest of justice.

It is also settled law that appointment of a receiver under Order 40 CPC is one of the harshest remedy provided by law for the enforcement of the rights of the parties and, as such, it is incumbent upon a court seized of the application for appointment of a receiver to appoint the same in extreme exceptional circumstances where interests of justice requires such a step to be taken.

8. Keeping in mind the aforesaid position and principles of law in mind and reverting back to the case in hand, it emanates from the record that defendants/appellants herein in the application for appointment of receiver,

while specifically have alleged the wasting and alienation of the property in question have also pointed out that insofar as the usufructs of the property are concerned, an order has been obtained by them from Additional Deputy Commissioner Anantnag, whereby he has directed Tehsildar Pahalgam to take supervision of the produce of suit property and put the costs of produce in his custody.

Further perusal of the impugned order would reveal that the trial court has not been oblivious to the said fact, but has been alive to the facts of the case, respective pleadings and claims of the parties inasmuch as the legal position operating and occupying the field.

9. A closer examination of the record would tend to show that the court below has accorded due consideration to the application and has consequently, after weighing the respective claims of the parties, as also the specific claim of the defendants appellants herein for appointment of a receiver rightly declined to exercise discretion and to appoint receiver. No fault is seen to have been committed by the trial court while passing the impugned order.

10. Viewed thus, this Court is not inclined to interfere with the impugned order, as a consequence whereof the appeal fails and is accordingly, **dismissed.**

**(JAVED IQBAL WANI)
JUDGE**

SRINAGAR

09.10.2025

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Whether order is speaking ? Yes

Whether approved for reporting ? Yes