

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

Reserved on: 28.11.2025

Pronounced on: 05.12.2025

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

CM(M) No.179/2021

MANZOOR AHMAD MIR & ANR.

... PETITIONER(S)/APPELLANT(S)

*Through: - Mr. G. A. Lone, Advocate, with
Mr. Mujeeb Andrabi, Advocate.*

Vs.

UT OF J&K & OTHERS

...RESPONDENT(S)

Through: - Mr. I. Sofi, Advocate.

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

JUDGMENT

1) The petitioners have challenged order dated 13.06.2013 passed by the learned Munsiff, Kupwara, whereby the suit filed by the private respondents against them and proforma respondents has been disposed of as having been compromised. Challenge has also been thrown to order dated 27.10.2021 passed by the learned Principal District Judge, Kupwara, whereby the appeal filed against order dated 13.06.2013 (supra), has been dismissed. Besides this, the petitioners have also laid challenge to order dated 24.09.2012 passed by the learned Munsiff, Kupwara, whereby Tehsildar, Kupwara, has been directed to hand over

possession of 03 kanals and 13½ marlas of land to the private respondents/plaintiffs and to furnish a report in this regard. The order passed by the learned District Judge, Kupwara, on 27.10.2021 dismissing the appeal against the aforesaid order dated 24.09.2014 passed by the learned Munsiff, Kupwara, has also been put to challenge by the petitioners.

2) Heard learned counsel for the parties and perused record of the case.

3) It appears that the contesting private respondents (hereinafter referred to as “the plaintiffs”) filed a suit against the petitioners and proforma respondents (hereinafter referred to as “the defendants”) before the Court of learned Munsiff, Kupwara (for short “the trial court”) seeking a permanent prohibitory injunction restraining the defendants from interfering in the possession of plaintiffs over the land measuring 12 marlas in Khasra No.742 situated at Kupwara with a further injunction that the defendants should not be allowed to raise any construction or change the nature of the suit property. The suit was contested by the defendants by filing a joint written statement.

4) On 13.06.2013, impugned order came to be passed by the trial court whereby the suit of the plaintiffs came to be

disposed of purportedly on the basis of consensus of the parties.

5) The aforesaid order came to be challenged by the defendants by way of an appeal before the learned District Judge, Kupwara, who, vide impugned order dated 27.10.2021, dismissed the appeal holding the same as not maintainable. In the meantime, the plaintiffs filed an execution petition before the learned trial court. Vide order dated 24.09.2014, the learned trial court directed the Tehsildar concerned to hand over possession of 03 kanals and 13½ marls of land to the plaintiffs after dispossessing the defendants from the said land. Again, an appeal came to be filed by the defendants against the said order before the learned District Judge, Kupwara, who, vide order dated 27.10.2021, held that the appeal is not maintainable.

6) The petitioners have challenged the impugned orders on the grounds that there was no formal deed of compromise executed and signed by the parties which is mandatory for passing a decree on consent/consensus, as such, order dated 13.06.2013 passed by the learned trial court, which is the basis of all other orders, is not sustainable in law. It has been contended that the impugned order dated 13.06.2013 has been passed by the trial court without any jurisdiction as all the parties to the suit have not appended their

signatures on the margin of the order sheet. It has also been contended that disposal of the suit by the learned trial court in the manner it has been done is unknown to law.

7) The question that is required to be determined in this petition is as to whether it was open to the learned trial court to dispose of and decide the suit filed by the plaintiffs against the defendants, in the manner it has been done. With a view to determine this question, it would be necessary to have a look at the contents of the impugned order dated 13.06.2013. The same is reproduced as under:

“13.06.13 - Parties along with their counsel present. On the basis of consensus reached between the parties the concerned Tehsildar is directed to demarcate all the land between the parties as per right and entitlement. If any party has disposed of any land, the same shall be deducted from his share. To this extent, the signature of the parties have been taken on margin of the order sheet. Accordingly, the suit is disposed of and be consigned to records after due completion.”

8) A perusal of the aforesaid order would reveal that it does not bear any details with regard to the land of the parties which has been directed to be partitioned through the agency of Tehsildar concerned. It is not mentioned in the order as to what is the entitlement of the parties to the joint land when the suit was filed only in respect of 12 marlas of land in Khasra No.742, which was claimed to be the joint property by the plaintiffs with the defendants. Impugned order dated 13.06.2013 encompasses within it all the joint

property held by the parties to the suit without giving any specifications or details of the said land.

9) Another glaring factor which, upon going through the contents of the aforesaid order, comes to the fore is that on the margin of the order sheet, only the signatures of plaintiff Shabir Ahmad and defendant Farooq Ahmad Mir are appearing. Signatures of no other party to the suit are appearing on the margin of the order sheet. It is also clear from the perusal of the trial court record that no written agreement or compromise was placed on record by the parties before the trial court. The question that falls for determination is as to whether on the basis of such type of compromise, a suit can be decided/decreed.

10) In the above context, the provisions contained in Order XXIII Rule 3 of CPC are required to be noticed. The same read as under:

3. Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise 1[in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or

satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

11) A plain reading of the above provision would reveal that for a valid compromise in a suit, there has to be a lawful agreement or compromise in writing and signed by the parties, whereafter it has to be proved to the satisfaction of the court.

12) In the present case, there is no compromise in writing executed by the parties to the suit before the trial court nor the same has been signed by the parties to the suit. Even on the order sheet, only the signatures of plaintiff Shabir Ahmad and defendant Farooq Ahmad are appearing. No other party has signed the order sheet. The trial court while passing the impugned order dated 13.06.2013 has not recorded its satisfaction on the basis of any agreement arrived at between the parties and no decree has been passed by the trial court while passing the said order. Thus, order dated 13.06.2013 does not qualify to be an order under Order XXIII Rule 3 CPC.

13) Apart from the above, the terms of the compromise that have been recorded in order dated 13.06.2013 are uncertain

and not specific, inasmuch as the details of the land which has been directed to be demarcated and partitioned are not mentioned at all. Even the location of the said land is not mentioned in the said order.

14) Section 29 of the Contract Act makes the agreements, the meaning of which is not certain or capable of being made certain, void. Illustrations (a) to Section 29 clearly demonstrates as to what is meant by agreements which are uncertain. As per the said Illustration if particulars of oil which was intended to be sold are not mentioned the agreement is to be termed as void for uncertainty. Similarly, in the present case, in order dated 13.06.2013, it is nowhere mentioned as to where the land sought to be demarcated and partitioned is located nor the quantum of the land has been mentioned in the said order. Thus, the compromise recorded by the trial court in its order dated 13.06.2013 is void in terms of Section 29 of the Contract Act. Therefore, as per explanation to Rule 3 of Order XXIII of the CPC, such an agreement cannot be deemed to be lawful within the meaning of the said Rule. The suit of the plaintiffs, as such, cannot be stated to have been compromised in terms of impugned order dated 13.06.2013.

15) For what has been discussed hereinabove, impugned order dated 13.06.2013 passed by the learned trial court and

all other subsequent orders passed by the trial court in the execution proceedings are set aside. The suit of the plaintiffs is restored to its original position and the trial court is directed to proceed further in the suit from the stage that had reached when order dated 13.06.2013 came to be passed by the said court. The parties are directed to appear before the trial court on **26.12.2025**.

16) A copy of this judgment be sent to the learned trial court for information and compliance.

(Sanjay Dhar)
Judge

Srinagar,
05.12.2025
“Bhat Altaf-Szeg”

Whether the order is reportable: **Yes/No**

