

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

LPA 241/2025 in OWP 127/2001 CM 6361/2025

**Iqbal Mubarik Khanyari Th.
His Attorney Holder**

...Petitioner(s)/Appellant(s).

Through: Mr. Aatir Javed Kawoosa, Advocate and
Mr. Areeb Javed Kawoosa Advocate.

Vs.

Shahzada Hussain And Ors

...Respondent(s).

Through: Ms. Ahra Syed, Advocate.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER
27.10.2025**

1. This intra-court appeal by the appellant-Iqbal Mubarik Khanyari is directed against an order dated 9th September, 2025, passed by the learned Single Judge of this Court (writ Court) in CM No. 5471/2024 in OWP No. 127/2001 titled "*Mst. Shahzada Hussain vs. State of J&K and Ors*", whereby the application filed by the appellant herein seeking recall of the order dated 17th March, 2023, passed in CM No. 1161/2023 arising out of OWP No. 127/2001, has been dismissed and the respondent No. 1 impleaded as party petitioner in OWP No. 127/2001.

2. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that in the given facts and circumstances, not only the respondent No. 1 but also the appellant herein and all other legal heirs of deceased Habibullah Khanyari i.e., petitioner No. 1 in the given petition, are required to be substituted for the purpose of pursuing/prosecuting the writ petition. Though we do not find any legal infirmity or error in the order impugned in so far it directs the impleadment of respondent No. 1 as party petitioner in place of her deceased father-Habibullah Khanyari, yet we are at loss to understand as to how the other

legal heirs including the appellant herein could be excluded. Admittedly OWP No. 127/2001 was filed by the deceased-Habibullah Khanyari along with five others for seeking, inter alia, writ of certiorari for quashing of Govt Order No. Home-419(P) of 2000 dated 28.09.2000.

While the aforesaid writ petition was pending Mr. Habibullah Khan died, leaving behind the appellant, respondent No. 1 and some more legal heirs. The appellant filed CM No. 6066/2022 seeking his substitution as the sole legal representative of deceased-Habibullah Khanyari on the ground that he had been conferred the exclusive right qua the property, subject matter of the writ petition, by virtue of a Will Deed executed by late Habibullah Khanyari. The appellant, however, did not indicate in his application the names of other legal heirs left behind by the deceased petitioner. While the application of the appellant was pending consideration, respondent No. 1 moved an application to be impleaded as party petitioner. It is this application which was allowed by the writ Court vide order dated 17th March, 2023 without notice to the parties including the appellant herein. The matter was agitated by the appellant before the Division Bench of this Court in LPA No. 92/2023. The LPA was allowed and the appellant herein was permitted to file recall application which application has now been dismissed in terms of the order impugned in this appeal.

3. We have given our careful consideration to the issue raised before us and we are of the considered opinion that the matter should not detain us further for the reason that both appellant as well as respondent No. 1 along with other legal heirs named by the respondent No. 1 in her application deserve to be substituted in place of deceased-Habibullah Khanyari, the petitioner No. 1 in OWP No. 127/2001. Needless to say that their substitution in place of deceased Habibullah Khanyari is only for the purpose of pursuing/prosecuting the writ petition and no beyond. The dispute with regard to the inheritance of the estate left behind by Habibullah Khanyari could be agitated by the parties before the competent Civil Court.

4. For all these reasons, we dispose of this petition by directing as under:
- I. That the appellant/respondent No. 1 and other legal heirs who have been named by the respondent No. 1 in CM No. 1161/2023 are substituted as petitioners in place of deceased-Habibullah Khanyari, the writ petitioner No. 1 in OWP No. 127/2001.
 - II. The impleadment/substitution of the aforesaid persons in the writ petition in place of Late Habibullah Khanyari would be limited for the purpose of pursuing/prosecuting the writ petition and would not create any right or liability in favour or against any of them qua the subject of the writ petition.
 - III. The order passed by the writ Court dated 9th September, 2025, in CM No. 5471/2024 shall be modified to the aforesaid extent and the CM No. 6066/2021 shall stand disposed of.
 - IV. The rights of the parties to succeed to the estate of Habibullah Khanyari including the subject of writ petition shall be subject to determination of Civil Court where litigation between the parties is pending.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR

27.10.2025

"Shafid Manzoor"

Whether the order is speaking

Yes/No

Whether approve for reporting

Yes/No.