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

CM(8013/2025)

IN

**CM(M) 458/2025 CM
(6890/2025) CM (7854/2025)
CM(M) 425/2025 CM
(6412/2025)**

Date of pronouncement: 09-12-2025
Uploaded on. 11.12.2025

ISHFAQ AHMAD WANI AND ANR.

..... Petitioner(s)

Through: Mr. T M Shamsi, DSGI with
Mr. Faizan Ah, CGC.
Mr. Z A Wani, Advocate.

V/s

MOHAMMAD ARIF MALIK

..... Respondent(s)

Through: Mr. Jahangir Iqbal Ganai, Sr. Adv
with Mr. Owais Ahmad, Adv and Ms. Syed
Gousia, Advocate.

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

ORDER(ORAL)

09.12.2025

1. The respondent has filed an application seeking vacation of order dated 17-10-2025 passed by this court with a direction to SHO Police Station Kupwara to handover the keys of the shop belonging to the respondent/applicant which according to him have been taken away by SHO Police Station Kupwara, under the garb of order dated 17-10-2025 passed by this Court.

2. It appears that respondent/plaintiff has filed a suit for Permanent Prohibitory Injunction against the petitioners/defendants before the court of learned Sub Judge Kupwara (hereinafter the trial court) in which the plaintiff has sought a decree of Permanent Injunction restraining the defendants from causing any sort of interference with the suit property, viz. double storied shops structure measuring 22.6x feet 12 feet along with piece of land underneath and appurtenant thereto measuring 8 marla falling under khasra No. 3594/1022 situated at Mouza Kupwara, which the plaintiff claimed to have purchased by virtue of an agreement to sell from one Aijaz Ahmad Bhat.

3. It seems that the defendants contested the suit by filing their written statement in which they claimed that agreement to sell relied upon by the plaintiff is a forged document. It has been pleaded by the defendants that they are carrying on business in the shops in the same building in which the suit shop is located. It has been claimed that the defendants are owners of two shops one in ground floor and another in the first floor of the building from where they are carrying their business of crockery and utensils. It has been further pleaded that there is only one staircase as means of ingress and egress to the first floor of the building which is being used by the shop keepers including the defendants. It has also been pleaded that

the plaintiff is trying to dispossess the defendants from their shops and is dismantling the staircase of the shopping complex.

4. On 14-08-2025, an ex-parte interim injunction came to be passed by the learned trial court, whereby the defendants were temporarily restrained from causing any sort of interference in the suit property.

It also appears that on 26-08-2025, the aforesaid order came to be modified directing the parties to maintain status quo on spot.

5. It also appears that on 06-09-2025 the plaintiff made an application before the learned trial court seeking release of keys of shop belonging to him. Vide order dated 26-09-2025, passed by learned trial court, a direction was issued for release of keys of the shops in favour of the plaintiff subject to certain conditions.

6. The aforesaid order came to be challenged by the defendants before this Court by way of CM(M) 425/2025 and an interim order came to be passed by this Court on 07-10-2025, whereby status quo with regard to the staircase which has ingress and egress for the defendants, was directed to be maintained.

7. It seems that in the meanwhile, an application came to be filed by the plaintiff before the learned trial court seeking implementation of order dated 26-09-2025 passed by the learned trial court.

Another order came to be passed by the said court on 04-10-2025, whereby SHO Police Station Kupwara and Naib Tehsildar

CM(M) 458/2025

CM(M) 425/2025

Kupwara were directed to implement order dated 26-09-2025. The said order came to be challenged by the defendants by way of another petition bearing CM(M) 458/2025.

8. With the consensus of learned appearing counsel for the parties, both the petitions viz., CM(M) No. 458/2025 and CM(M) No. 425/2025 are taken up for final disposal.

9. I have heard learned counsel for the parties and perused the record of the case.

10. By virtue of CM(M) 425/2025, the petitioners have challenged Order dated 24-09-2025, passed by learned Sub-Judge Kupwara, whereby an application filed by the respondent for release of keys of the shop belonging to him has been disposed of and a direction has been issued for release of keys in his favor, subject to certain conditions.

11. Vide CM(M) No. 458/2025 the petitioners/defendants have challenged order dated 04-10-2025 passed by the learned trial court, whereby implementation of order dated 26-09-2025 has been directed through SHO Police Station Kupwara and Naib Tehsildar Kupwara.

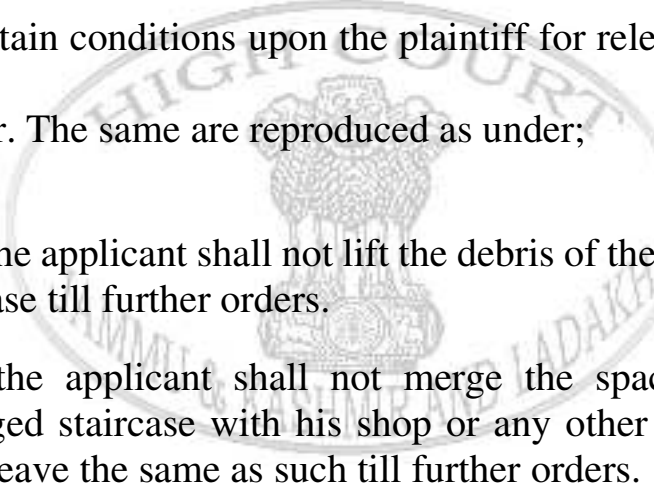
12. The grievance of the petitioners is that there is a staircase existing adjacent to the shop of the respondent/plaintiff which leads to the

shops from which the petitioners are operating their business activities. It is the case of the petitioners/defendants, that there is only one single staircase as means of ingress and egress to the ground and first floor of the shopping complex in which their shops are located, and the actions of the plaintiffs are causing hindrance to their ingress and egress to their shops, which prejudicially affects their business. It is the further case of the petitioners that the respondent/plaintiff is trying to dismantle the staircase and merge the said portion with his own shop, thereby blocking the access towards the shops owned and possessed by the petitioners.

13. There is no dispute to the fact that one of the shops located on the ground floor of the building where the shops of the parties are situated, is in possession of the respondent/plaintiff. While the respondent/plaintiff claims that he has purchased the said shop under an agreement to sell, the petitioners claim that the said agreement to sell is bogus. Nonetheless, it is not the case of petitioners that the shop which is under the occupation of the plaintiff/respondent is their property. Therefore, taking away keys of the shop which is admittedly in occupation of the respondent/plaintiff by the SHO concerned cannot be justified in any manner whatsoever. The petitioners can lay their claim only with regard to the portion which according to them is being used as a staircase for access towards their shops, but they cannot create a

situation where the respondent/plaintiff is ousted from the shop which is under his occupation. The action of the SHO concerned in taking away the keys of the shop of respondent/plaintiff cannot be justified in law.

14. Learned trial court while passing order dated 26-09-2025, has imposed certain conditions upon the plaintiff for releasing of keys in his favour. The same are reproduced as under;

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- a. That the applicant shall not lift the debris of the damaged staircase till further orders.
 - b. That the applicant shall not merge the space of the damaged staircase with his shop or any other shop and shall leave the same as such till further orders.
 - c. That the applicant shall not commit any act which would lead to breach of peace.
 - d. That the applicant shall deposit the keys before this court as and when directed.

15. From a perusal of the aforesaid conditions laid down by the trial court, it is clear that the said court has ensured that no further damage is caused to the staircase and the respondent/plaintiff is prevented from merging the space of the damaged staircase with his shop. Vide impugned order dated 04-10-2025, the learned trial has only asked the SHO Police Station Kupwara and Naib Tehsildar Kupwara to implement the aforesaid order dated 26-09-2025. While noticing the apprehension expressed by the SHO and the Naib Tehsildar that

the plaintiff may permanently merge the space meant for the staircase with the shop, the learned trial court has in its order dated 04-10-2025 noted that the two applications filed by the petitioners/defendants for reconstruction of the suit property and for restoration of egress and ingress are still pending before the said court in which appropriate orders are yet to be passed.

16. The concern and apprehension of the petitioners can in fact be addressed only if order dated 26-09-2025 is implemented in its letter and spirit by the executing agencies. Once the conditions imposed upon the plaintiff in terms of order dated 26-09-2025 are strictly monitored by the executing agencies, the apprehension regarding further dismantling of staircase and its merger with shop of the plaintiff would be taken care of. Divesting the plaintiff from the possession of his shop would not serve the purpose of the defendants. The object of restoration of the damaged portion of the staircase and restoration of ingress and egress of the defendants/petitioners can be achieved by the defendants only if their applications made in this behalf are decided in their favour. The issue with regard to restoration of staircase and ingress and egress to the shops of the defendants has to be decided by the trial court on its merits while dealing with the applications of the defendants.

The same cannot be done by this Court in the present

proceedings particularly when the trial court is seized of the matter.

17. In view of the above, I do not find any ground to interfere with the impugned orders passed by the learned trial court on 26-09-2025 and 04-10-2025. The petitions are accordingly *disposed of* with a direction to learned trial court to decide the applications filed by the petitioners for reconstruction of the stair case and restoration of ingress and egress most expeditiously preferably within a period of one month from the date a copy of this order is made available to the said court. It is further directed that SHO Police Station Kupwara and Naib Tehsildar Kupwara shall ensure that after handing over of the keys of the shop to the respondent/plaintiff, the conditions laid down in order dated 26-09-2025 are implement on spot in their letter and spirit. Further the respondent/plaintiff shall file an undertaking before the learned trial court that he shall not alter the status quo on spot without prior permission of the learned trial court.

18. Both the petitions are *disposed of*.

(Sanjay Dhar)
Judge

SRINAGAR
09.12.2025
Sarvar

Whether the order is Speaking: Yes
Whether the order is Reportable: Yes/No

CM(M) 458/2025
CM(M) 425/2025