

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM (M) 146/2022 IA(1/2018)
CM(2296/2025).

KHURSHID AHMAD BHAT AND ORS.

...Petitioner(s)

Through: Mr. Baber Bilal Malik, Advocate.

VERSUS

GHULAM NABI AND ORS.

Through: None for R1.
Mr. H. Furrahi, Advocate for R2.

...Respondent(s)

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE.

ORDER
17.09.2025

01. An inadvertence, that too of a procedural nature, on the part of an advocate conducting a civil suit or a civil first appeal for respective litigant can have far-reaching consequence is exhibited by this case in which more than six years in running have been consumed in terms of the engagement of this Court with present petition under Article 227 of the Constitution of India.

02. The facts, in brief, forming the backdrop of the institution of the present petition are set out herein next.

03. On **21st of December, 1978**, two plaintiffs namely, Mst. Mukti and Mst. Azizi, who are said to be real sisters had filed a suit against a set of defendants with leading defendant being one- **Ramzan**.

04. The suit was originally instituted before the Court of Munsiff Anantnag.

05. The civil suit was for simplicitor declaration seeking to declare the two plaintiffs as co-owners/sharers with the defendants with respect to the suit property comprising 52.10 kanals under Khewat Nos. 20, 21 and 22 of Village Sindhu along with the standing trees and Khewat Nos. 15, 16 and 17.

06. The plaintiffs traced tracing their purported title from the common ancestor one Kamal, who is said to have been survived only by one daughter as legal heir- Mst. Khatiji, who in turn was having two daughters that is the original two plaintiffs as

successors to the estate. However, Mst. Khatiji, the mother of two plaintiffs also had sons as being brothers of the two plaintiffs.

07. During the pendency of the civil suit, the two original plaintiffs Mst. Mukti and Mst. Azizi, had died. In their place, their respective legal heirs/representatives were brought on record, namely, Ramzan son of Mst. Mukti and Ghulam Nabi S/o Mst. Azizi.

08. During the pendency of the civil suit, some of the defendants had also expired resulting in their respective legal representatives/heirs being brought on record, thus inflating the array of defendants in the civil suit.

09. Thirteen (13) number of issues came to be framed in the civil suit.

10. The said suit came to be decreed *ex-parte* against the defendants vide judgment and decree dated **02.07.1991** which had resulted in a civil first appeal under Section 96 of Jammu and Kashmir Code of Civil Procedure Svt., 1977 preferred by 22 appellants, all of them were defendants in the civil

suit, both in their original capacity and as legal representatives of the deceased original defendants.

11. This civil first appeal before the Court of District Judge, Anantnag is said to have resulted in judgment dated **14.03.2000**, thereby upsetting the *ex-parte* judgment and decree dated **02.07.1991** with the case place being remanded back to the Court of Munsiff, Anantnag for adjudication which resulted in re-admission of the civil suit later on transferred to the Court of Munsiff Shangus and diarised there on **22.06.2002** on **file No. 59/Numbri.**

12. The Court of Munsiff, Shangus came to decree the suit by virtue of judgment and decree dated **31.10.2006.**

13. At the time when civil first appeal preferred by the 22 defendants before the Court of Principal District Judge, Anantnag was pending, the two substituted plaintiffs, namely **Ramzan** and **Ghulam Nabi** had figured as two respondents in the said civil first appeal.

14. During the pendency of the civil first appeal against *ex-parte* judgment and decree dated **02.07.1991**, one of the two respondents, namely, Ramzan, the substituted plaintiff No. 1, had expired. The appellants in the said civil first appeal brought on record the legal representatives of said deceased respondent No. 1/decree holder No. 1- Ramzan so as to carry forward their civil first appeal.

15. Upon the revival of the civil suit in terms of the remand order passed by the Court of Principal District Judge, Anantnag, the scenario which came forth was that the plaintiff No. 1- Ramzan was no more and nobody came forward from his legal representatives to get himself/herself/themselves substituted as legal representative/s.

16. The suit in remand was pursued by the surviving plaintiff/respondent No. 2- Ghulam Nabi herein, obviously, on the strength of the legal position that the right to sue was reckoned to have survived in favour of the co-plaintiff No. 2- Ghulam Nabi.

17. Against the judgment and decree dated **31.10.2006**, the eleven (11) defendants namely (1). **Hassan Bhat**,

(2).Naba, (3).Gulla, (4).Mst. Saja, (5).Rehman, (6).Mohammad Shaban, (7).Salam Bhat, (8).Mst. Taja, (9).Ghulam Mohammad, (10).Naba and (11). Gul Mohammad Bhat against the sole respondent/decreed holder- **Ghulam Nabi**.

18. The civil first appeal was preferred by the above-named appellants before the Court of Principal District Judge, Anantnag. The appeal remained and, is still pending on the docket of the Principal District Judge, Anantnag.

19. In the year 2015, the appellants came forward with an application under Section 151 of the Code of Civil Procedure read with Order 10 Rule 2 of the Jammu and Kashmir Code of Civil Procedure Svt., 1977, thereby seeking the impleadment of the legal representatives of the deceased plaintiff No. 1 Ramzan.

20. In said application, the fact of non-impleadment of the legal representatives of the deceased co-plaintiff No. 1- Ramzan was pointed out by the counsel for the sole respondent/decreed holder-Ghulam Nabi as being the plaintiff No. 2 in the civil suit.

21. This application of the appellants came to suffer rejection in terms of the impugned order dated **14th June, 2018** against which the appellants of the civil first appeal joined by legal representatives of some of the deceased appellants came forward with a supervisory petition under Section 104 of the Constitution of India. The petition was instituted on **31.07.2018** and diarised as **OWP No. 1436/2018**, later renumbered as **CM (M) No. 146/2022**.

22. It is the impugned order dated **14.06.2018** of the Principal District Judge, Anantnag with respect to which the legality and validity are to be examined by this Court.

23. This Court is of the view that the order is illegal for the simple reason that the Court of Principal District Judge, Anantnag missed the woods for the trees and passed the order in a mechanical manner without delving deep into the facts and circumstances of the case, which if it would have been done so perhaps would have not resulted in the outcome as otherwise came to be in the form of order dated **14.06.2018**.

24. The admitted fact is that the substituted plaintiff No. 1-**Ramzan**, the legal representative of the original plaintiff No. 1-**Mst. Mufti**, had died in the year 1991 when the first round of civil first appeal preferred by the appellants against the *ex-parte* judgment and decree dated **02.07.1991** was pending.

25. The legal representatives of the deceased respondent No. 1/plaintiff No.1 – Ramzan were brought on record vide an order dated **30.12.1996** in said appeal.

26. When the said *ex-parte* judgment and decree dated **02.07.1991** got upset and reversed by a remand order reviving the civil suit, the scenario before the trial court was that the plaintiff no. 1- Ramzan was a deceased plaintiff.

27. At this stage of the civil suit, it was not the responsibility of the contesting defendants to get the legal representatives of the deceased plaintiff No. 1 brought on record.

28. It was, in fact, the plaintiff No. 2-Ghulam Nabi who ought to have apprised the trial court about the

aspect that the right to sue in the civil suit, despite the death of plaintiff No. 1-Ramzan, was surviving unto himself and that is how he carried on the civil suit in his own name and right though without expressly mentioning about this aspect.

29. Otherwise, the failure of the legal representatives of the deceased plaintiff No. 1- **Ramzan** to come on record would, in the eyes of law, have meant abatement of the civil suit to the extent of the deceased plaintiff no. 1 but as there was no such order to that effect from the trial court it meant that the right to sue was assumed to have accrued and survived in favour of the plaintiff No. 2- Ghulam Nabi to carry forward the suit towards its logical adjudication resulting in passing of the judgment dated **31.10.2006**.

30. Thus, on this count, the appellants- the judgment debtors and defendants, in their civil first appeal before the Court of Principal District Judge, Anantnag ought not to have been prejudiced in any manner whatsoever by the fact of non-impleadment or even by their effort to get the impleadment of the

legal representatives of Ramzan- the deceased plaintiff No. 1. In fact, the Appellate Court of Principal District Judge, Anantnag ought to have been thankful to the appellants for apprising the Court about a procedural lacuna attending the proceedings and should have attended to that by an observation that upon the death of plaintiff No. 1- Ramzan, the right to sue has survived in favour of the plaintiff No. 2 so as to ensure the benefit of the judgment and decree stayed intact even for the benefit of the legal representatives of the deceased plaintiff No.1. This would have been the proper result of the civil first appeal whether in case of its dismissal against the appellants or in the event of it succeeding then against the co-plaintiff No. 2- Ghulam Nabi and the legal representatives of co-plaintiff No. 1- Ramzan.

31. The co-plaintiff No. 2- Ghulam Nabi, at no point of time, ever objected to the fact that he was not to be meant as representing the interest of the deceased co-plaintiff No. 1-Ramzan when he himself was well-knowing the fact that upon death of Ramzan as a

plaintiff No. 1, his legal representatives ought to have come forward to get themselves impleaded as plaintiffs to pursue the suit on behalf of deceased plaintiff No. 1.

32. Since the same was omitted to be done by co-plaintiff No. 2, in the eyes of the law it meant that he reckoned the right to sue surviving unto himself so as to pursue the suit to its logical end leading to the passing of judgment and decree dated **31.10.2006**.

33. In the light of the aforesaid, this petition is allowed. Order dated **14.06.2018** passed by the Principal District Judge, Anantnag is set aside. The legal representatives of the deceased plaintiff No. 1- Ramzan as named by the appellants in their application are ordered to be impleaded in the civil first appeal and also in the civil suit with the retrospective effect enabling the adjudication of the civil first appeal on its merits without being lost in this legal representatives' impleadment aspect.

34. Copy of this order be forwarded to the Principal District Judge, Anantnag for reviving the appeal proceedings.

35. Parties are directed to appear before the Appellate
Court on **20.10.2025.**

(Rahul Bharti)
Judge

SRINAGAR
17.09.2025
Bisma Jan.

