

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

**CM(M) No.525/2025
CMNo.7853/2025**

FIRDOUS AHMAD WALOO AND OTHERS

...PETITIONER/APPELLANT(S)

Through:-Mr. I.A.Parray, Advocate

Vs.

MOHAMMAD JAFFAR BAHAR AND ORS

...RESPONDENT(S)

Through:-None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

**ORDER
28.11.2025**

1) The petitioners through the medium of present petition have invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India for challenging order dated 24.10.2025 passed by learned Munsiff Sumbal (hereafter 'the trial Court') whereby in an application filed by the respondents/plaintiffs against the petitioners/defendants under Order 39 Rule 1 and 2 CPC, the petitioners have been temporarily restrained from causing any sort of interference with the possession and enjoyment of the respondents/plaintiffs over the suit property.

2) Heard and Considered.

3) It appears that the respondents/plaintiffs have filed a suit for permanent prohibitory injunction against the petitioners/defendants before the learned trial Court, with the prayer for restraining the defendants from interfering in their possession over the land measuring 12 kanal falling under Survey No.278-ا and 278-ب, situated at Gundi Nowgam Tehsil Sumbal, District Bandipora. Alongwith said suit, the plaintiffs filed an application under Order 39 Rules 1&2 CPC. On 24.10.2025, the learned trial Court granted an *ex parte* interim injunction in favour of the plaintiffs, thereby restraining the defendants from causing any sort of interference in plaintiffs' possession over the suit property. The order has been made subject to the objections of other side and matter has been adjourned to 28.11.2025.

4) Learned counsel for the petitioners has contended that the trial Court had dismissed the suit of the defendants in respect of the same land in terms of its order dated 03.10.2025, by holding that the dispute between the parties is cognizable by the Revenue Court, but dealing with suit filed by the plaintiffs/respondents the trial Court has not only entertained the suit but it also passed the impugned order. On this ground it is being contended that there are special circumstances involved in the present case for this Court to exercise its power under Article 227 of the Constitution of India despite availability of alternate remedy to the defendants/petitioners.

5) If we have a look at order dated 03.10.2025 passed by the learned trial Court, whereby suit of the petitioners/defendants had been dismissed, it appears that in the suit reliefs of declaration to the effect that the plaintiffs therein are owners of the suit land with the mandatory injunction against the defendants therein that they should vacate the suit land and handover the possession to the petitioners herein were sought. Thus, the nature of the suit that was filed by the petitioners, which was subject matter of order dated 03.10.2025, was different from the nature of the suit that has been filed by the respondents against the petitioners, in which impugned order came to be passed. Therefore, it is not a case where learned trial Court has entertained identical suit that was filed by the petitioners in respect of the suit land, but it is a case where the suit in which the impugned order came to be passed, is of a different nature. Thus, there are no special circumstances involved in the present case.

6) Even otherwise, the contention raised by the petitioners in the present petition can always be projected by them at the time of filing of written statement to the suit filed by the respondents or they can raise this ground by filing an appeal against the impugned order before the concerned District Judge. Without availing these remedies, the petitioners have rushed to this Court and invoked its supervisory jurisdiction, which is not permissible in law.

7) Learned counsel for the petitioners has in support of his contention, that even in the presence of alternative remedy this Court can exercise its power under Article 227 of the Constitution, relied upon the judgments of the Supreme Court in ***Kishore Kumar Khaitan v. Praveen Kumar Singh*, AIR 2006 SC 1474 and *Raj Shri Agarwal @ Ram Shri Agarwal and Anr. vs. Sudheer Mohan and Ors*, 2022 Live Law (SC) 864.**

8) I am afraid the ratio laid down in the aforesaid two cases does not apply to the present case. In ***Kishore Kumar Khaitan's case* (supra)** the appellant had exhausted his remedy of appeal before the Appellate Court prior to invoking the supervisory jurisdiction of High Court under Article 227 of the Constitution, whereas, in ***Raj Shri Agarwal case* (supra)** the Supreme Court has observed that High Court ought to have converted the writ petition under Article 227 into revision petition under Section 115 CPC instead of dismissing the writ petition on account of alternate remedy under Section 115 CPC. In the instant case the remedy of appeal against the impugned order lies before the District Judge concerned. Therefore, this Court cannot treat the present petition as an appeal on behalf of the petitioners against the impugned order.

9) For what has been discussed herein before, this Court refuses to exercise its power under Article 227 of the Constitution against the impugned order in presence of alternate efficacious remedy

available to the petitioners. The petition is, accordingly dismissed, leaving it open to the petitioners to avail appropriate remedy.

(SANJAY DHAR)
JUDGE

SRINAGAR
28.11.2025
Sarveeda

Whether the order is reportable: Yes/No

