

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

RSA No. 2/2021 (O&M)

**Reserved on: 30.07.2026.
Pronounced on: 21.08.2026.
Uploaded on: 21.08.2026.**

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

Sham Lal, Age 68 Years
S/O Late. Sh. Bhagat Ram R/O Ward
No. 17 Poonch Tehsil Haveli District
Poonch

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

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Amit Bhardwaj, Advocate.

vs

Janki Nath, S/O Late Sh. Bhagat
Ram R/O Raghunathpura
Jammu.

..... Respondent(s)

Through: Mr. Vikram Sharma, Sr. Advocate with
Mr. Sachin Dev Singh, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This Second Appeal is directed against the order dated 25.01.2021 passed by the Court of learned Principal District Judge, Poonch (for short "1st Appellate Court") in Civil Appeal No. 29 titled "*Sham Lal vs. Janki Nath*", whereby the appeal preferred by the appellant, against the order dated 31.10.2020, passed by the Tehsildar Haveli, Poonch in an application filed by the respondent for partition of the land measuring 02 Kanals 13 Marlas (Survey No. 553), 13 Marlas (Survey No. 563), 10 Kanals 11 Marlas (Survey No. 564), 16 Marlas (Survey No. 652), 02

Kanals 14 Marlas (Survey No. 656), 01 Kanal 01 Marla (Survey No. 657) and 06 Kanals 09 Marlas (Survey No. 743), situated at Village Ajote, Tehsil Haveli, District Poonch, has been dismissed.

2. Vide order dated 12.09.2022, following substantial question of law was framed:

“Whether the Tehsildar Haveli, Poonch was mandatorily required to adhere to the procedure prescribed under Section 110 of the Land Revenue Act and Rule 12 and 13 of the J&K Partition Rules, 1970 in deciding the objections of private partition raised by the appellant?”

3. Before this Court answers the above-mentioned substantial question of law, it would be apt to have a brief resume of the factual matrix of the case.

Factual Matrix:-

4. The parties to the present proceedings are real brothers. The respondent instituted a petition for partition before the learned Tehsildar, Haveli, Poonch, in respect of the subject land, on the premise that the said property was originally owned by their late father and, upon his demise, the mutation of inheritance was duly attested jointly in favour of the parties. It was further pleaded that notwithstanding repeated demands made by the respondent for partition by metes and bounds, the appellant did not accede to the same.
5. The appellant resisted the petition by submitting that a private partition had already taken place regarding the subject land, pursuant to which the respondent executed an Agreement to Sell dated 12.07.1998 in favour of one Rajesh Kumar, who subsequently transferred the same to the appellant

through a separate Agreement to Sell. The appellant further contended that a similar petition involving the same subject-matter and seeking identical relief was pending before the Assistant Commissioner Revenue (ACR), Poonch, thereby rendering the present proceedings liable to be stayed under Section 10 of the Code of Civil Procedure. Additionally, it was pleaded that a suit for specific performance instituted by the initial vendee, Rajesh Kumar, was already sub-judice before the Court of the learned Sub-Judge (CJM), Poonch and the Court which had taken cognizance of the matter. Consequently, the appellant asserted that the respondent retained no subsisting share in the subject land amenable to partition.

6. Upon examining the record, Tehsildar, Haveli, observed that pursuant to Mutation of Inheritance No. 583, the subject land stood mutated in equal shares in the names of the parties following the demise of their father, late Sh. Bhagat Ram. Although the appellant asserted that the respondent had sold his share to one Rajesh Kumar (s/o Moti Lal) in 1998 and that the appellant subsequently repurchased the said share from Rajesh Kumar in 1999, the Tehsildar noted that the appellant failed to produce any cogent documentary evidence in support of this plea. Furthermore, the Tehsildar took note of the order passed by the Additional Deputy Commissioner, Poonch, wherein the Agreement to Sell allegedly executed by Janki Nath was found to be forged. Consequently, after hearing the parties, the Tehsildar, Haveli, vide order dated 31.10.2020, directed the partition of the subject land in equal proportions and instructed the Naib-Tehsildar to execute the partition accordingly.

7. Aggrieved by the order dated 31.10.2020, the appellant preferred 1st appeal before the First Appellate Court, reiterating the grounds raised before Tehsildar. Additionally, it was urged that the Tehsildar ought to have awaited the final outcome of the suit for specific performance pending before the Court of the learned Sub-Judge, Poonch.
8. The 1st Appellate Court found no merit in the appellant's contention that a private partition had already taken place. Furthermore, the Appellate Court observed that the mere pendency of a civil suit for specific performance poses no legal bar against the Revenue Authority from proceeding with the partition proceedings before it.
9. After dismissal of the appeal, the appellant has now come up with the present appeal, wherein a substantial question of law as mentioned above stands already framed.

Submissions:

10. Mr. Rahul Pant, learned Senior Counsel appearing for the appellant has submitted that once the title was disputed by the appellant, the Revenue Officer ought to have proceeded in terms of Section 111-A(3) of the Land Revenue Act. He further submitted that once the respondent was not in possession of the property, so the Tehsildar ought to have resorted to Rules 12 and 13 of the J&K Partition Rules, 1970.
11. Per contra, Mr. Vikram Sharma, learned Senior Counsel appearing for the respondent, has submitted that, in law, possession of one co-sharer is possession of all and further that the agreement to sell relied upon by the appellant to assert that the property stood already partitioned is belied by the document itself, as though in the agreement to sell, it was stated that

property stood partitioned and partition has been reflected in the revenue record, but these contents are belied by the revenue record itself, wherein no such partition has been reflected. He has vehemently argued that mutation No. 3222 attested in favour of Sham Lal on the basis of so called alleged agreement to sell executed by Rajesh Kumar was set-aside by the Additional Deputy Commissioner, Poonch in terms of order dated 15.07.2019. He further submitted that the said order was assailed by the appellant before the Additional Commissioner, but there too the appellant remained unsuccessful, as the appeal preferred by the appellant was dismissed in terms of order dated 08.05.2025. He has further submitted that the suit for specific performance of contract instituted by Rajesh Kumar through the appellant stands already withdrawn by Rajesh Kumar. Mr. Sharma has relied upon the order dated 08.03.2004 passed by the Division Bench of this Court in **LPA(OW) no. 09/2004 titled Sukhdev Singh vs. State of J&K and others**, in order to double down his submissions.

12. In rebuttal, Mr. Rahul Pant, learned Senior Counsel appearing for the appellant has submitted that against the order dated 08.05.2025, passed by the Additional Commissioner, Jammu, the appellant has already availed the remedy before the Joint Financial Commissioner (R).
13. Heard learned counsel for the parties and perused the record.

Appreciation:

14. Sections 110, 111 and 111-A of the Land Revenue Act, and Rules 12 713 of the J&K Partition Rules are relevant for answering the abovementioned substantial question of law, which are extracted as under:

“110. Procedure on objection that partition has already been made privately.—

If it is alleged by any of the co-sharers that the land or the tenancy has already been divided by a partition made privately, the Revenue officer, notwithstanding anything to the contrary in section 32 of this Act, shall proceed as though the objection was an application under section 118 of this Act, and if he finds that private partition has in fact been made, may pass orders affirming it, and refusing the application made under section 105 of this Act.

111. Procedure on admission of application.—

If the [Revenue officer] does not refuse the application under the two last foregoing sections, he shall ascertain the questions, if any, in dispute between any of the persons interested distinguishing between—

(a) Question as to title in the property of which partition is sought, including question as to the property to be divided ; and

(b) The mode of making the partition.

111-A. Objection raising question of title. —

(1) If any objection is made by a recorded co-sharer involving a question of proprietary title which has not been already determined by a Court of competent jurisdiction, the [Revenue officer] may either—

(a) Decline to grant the application until the question in dispute has been determined by a competent Court, or

(b) Require any party to the case to institute within three months a suit in the Civil Court for the determination of such question, or

(c) Proceed to enquire into the merits of the objection.

(2) When the proceedings have been postponed under clause (b), if such party fails to comply with the requisition, the [Revenue officer] shall decide the question against him. If he institutes the suit the [Revenue officer] shall deal with the case in accordance with the decision of the Civil Court.

(3) If the [Revenue officer] decides to enquire into the merits of the objection, he shall follow the procedure laid

down in the Code of Civil Procedure for the trial of original suits.”

Partition Rules:

“12. When partition proceeding may be suspended

In case where the appellant is out of possession (whether recorded as Ghair Qabiz or not), the Revenue Officer should decline to grant the application until he has obtained possession, but the application should not be refused merely because the area in possession is much less than the applicant’s share, but if the area in possession is only nominal, it should be refused and the applicant referred to a suit for possession, the point to look to is, whether he is genuine applicant for partition or merely wishes to use the partition procedure in order to avoid a suit for possession.

13. Objection that land is already divided

If objection is raised that the land has already been privately divided, the Revenue Officer shall give the parties an opportunity of producing evidence on the point. Difference between the land actually held by the parties, and the share due to them, should be enquired into and explained as far as possible. But the Revenue Officer is not bound to reject the objection merely because of such difference, if he is satisfied that a permanent private partition has really been made. If he finds that the land has actually been privately divided, the Revenue Officer should pass orders confirming it under section 118, otherwise he may reject the objection and proceed with the application for partition.”

- 15.** In terms of Section 110 of the Land Revenue Act, if it is alleged by any of the co-sharers that the land or the tenancy has already been divided by a partition made privately, the Revenue officer shall proceed as though the objection was an application under section 118 of this Act, and if he finds that private partition has in fact been made, may pass orders affirming it, and refusing the application made for partition.

16. Further in terms of Section 111, the Revenue Officer has to distinguish between the question as to title in the property of which partition is sought, including question as to the property is to be divided and the mode of making partition.
17. So far as issue regarding question of title is concerned, Section 111-A would govern the field, which provides that the Revenue Officer may decline to grant application until the question in dispute has been determined by a competent Court or require any party to the case to institute within three months a suit in the Civil Court for the determination of such question or proceed to enquire into the merits of the objection. However, while considering the merits of the objection, he has to follow the procedure as contained in the Code of Civil Procedure.
18. The substantial question of law comprises of two parts; first part relates to compliance of Section 110 of Land Revenue Act and the second part covers the compliance of Rules 12 and 13 of J&K Partition Rules. Section 111-A of the Land Revenue Act, would apply only when there is dispute regarding the title of the property. The appellant is raising the dispute regarding the title of the property only on the basis of agreement to sell, pursuant to which mutation No. 3222 was attested but was set aside by Addl. Deputy Commissioner in terms of order dated 18.07.2019. Otherwise also, the agreement to sell does not create any interest or charge on the subject matter of agreement to sell. In **“Suraj Lamp and Industries Pvt. Ltd Vs. State of Haryana and Anr”**, AIR 2012 SUPREME COURT 206., Hon’ble the Apex Court has observed as under:

“12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.”

19. In “Vinod Infra Developers Ltd. Vs. Mahaveer Lunia & Ors”, AIR 2025 Supreme Court 2933, Hon’ble the Apex Court has observed as under:

9.4. Furthermore, in M.S. Ananthamurthy v. J. Manjula, this Court undertook a comprehensive analysis of the statutory provisions and precedents, and reaffirmed that an unregistered agreement to sell does not and cannot by itself create or transfer any right, title, or interest in immovable property. The following paragraphs are pertinent in this regard:

"47. It is a settled law that a transfer of immovable property by way of sale can only be by a deed of conveyance. An agreement to sell is not a conveyance. It is not a document of title or a deed of transfer of deed of transfer of property and does not confer ownership right or title. In Suraj Lamp (supra) this Court had reiterated that an agreement to sell does not meet the requirements of Sections 54 and 55 of the TPA to effectuate a 'transfer'.

...

51. Section 17(1)(b) prescribes that any document which purports or intends to create, declare, assign, limit or extinguish any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property is compulsorily registerable. Whereas, section 49 prescribes that the documents which are required to be registered under Section 17 will not affect any immovable property unless it has been registered.

....

53. Even from the combined reading of the POA and the agreement to sell, the submission of the appellants fails as combined reading of the two documents would mean that by executing the POA along with agreement to sell, the holder had an interest in the immovable property. If interest had been transferred by way of a written document, it had to be compulsorily registered as per Section 17(1)(b) of the

Registration Act. The law recognizes two modes of transfer by sale, first, through a registered instrument, and second, by delivery of property if its value is less than Rs. 100/-."

Accordingly, it is abundantly clear that the unregistered agreement to sell dated 24.05.2014 cannot, under any circumstance, create or convey any right, title or interest in favour of Respondent No.1 under Section 54 of the Transfer of Property Act, 1882. The subsequent revocation of authority further nullifies any claim to title based on such documents.

20. Thus, it cannot be said that there was any dispute with regard to the title of the property regarding which Tehsildar was required to resort to Section 111-A of the Land Revenue Act.
21. This is borne from the record that no entry exists in the revenue record with regard to partition of the land mentioned above, and this belies the contents of agreement to sell, allegedly executed by the respondent in favour of the initial vendee, Rajesh Kumar, wherein, it was mentioned that the land stood partitioned, regarding which, entry has been made in the revenue record. This is admitted case of the parties that mutation No. 3222 attested in favour of appellant has been set aside by ADC, Poonch in terms of order dated 15.07.2019. Thus, the claim of partition made by the appellant is an imaginary, not supported by any documentary evidence, regarding which, Tehsildar after due appreciation of the record and factual aspect of the case has determined that the property has not been partitioned between the parties. The finding of fact has been recorded by Tehsildar concerned and has been affirmed by the 1st Appellate Court.
22. Thus, this Court is of the considered view that Tehsildar, Haveli has rightly followed the mandate of Section 110 of the Land Revenue Act and there is no statutory non-compliance by Tehsildar concerned.

23. The Second part of substantial question of law concerns compliance of Rule 12 and 13 of J&K Partition Rules, 1970.

24. It was argued by the learned Senior Counsel for the appellant that, since the appellant was out of possession, the partition proceedings were required to be suspended until the appellant obtained possession in the suit for possession. As already observed above, the claim of the appellant being in possession on the basis of agreement to sell has failed and even if he claims to be in possession of property, he is in occupation as co-sharer and possession of one co-sharer is possession of all others. Reliance is placed upon the decision of Hon'ble Apex Court in "**T. Ramalingeswara Rao (Dead) Thr. Lrs. Vs. N. Madhava Rao**", AIR 2019 SUPREME COURT 1777, wherein, the Hon'ble Supreme Court of India has held as under:

17. In our view, even assuming that the plaintiffs claimed to be in possession of the suit property (which the two Courts below did not find in their favour) for claiming injunction, yet they were not entitled to claim injunction against the other co-sharers over the suit property. **It is a settled principle of law that the possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereon for the statutory period.** See Mohammad Baqar and Ors. v. Naim-un-Nisa Bibi and Ors.(AIR 1956 SC 548)

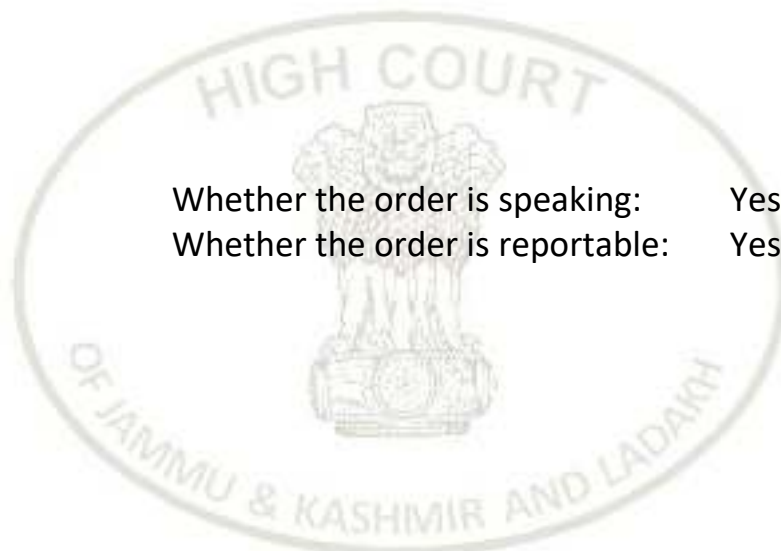
25. Moreso, the Division Bench of this Court in "**Sukhdev Singh V. State of J&K & Ors.**", bearing LPA(OW) No. 99/2004 has held that Rule 12 can be applied in case of persons who have been ousted and dispossessed. Once this court has already determined that there was no private partition of the land, the compliance of Rule 13 of J&K Partition Rules becomes meaningless. Accordingly, this Court is of the considered view that in the peculiar facts and circumstances of the present case, Tehsildar Haveli,

Poonch was not required to follow the mandate of Rule 12 and 13 of the J&K Partition Rules.

26. Substantial question of law is answered accordingly.
27. Viewed thus, the instant appeal is found to be devoid of merit and is, accordingly, dismissed. The decree sheet be prepared accordingly.
28. The record of the 1st Appellate Court/Authority concerned be sent back forthwith.

(RAJNESH OSWAL)
JUDGE

Jammu
21.08.2026
Sahil Padha



Whether the order is speaking: Yes
Whether the order is reportable: Yes