

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

Uploaded on 09.10.2026

CM(M) No. 25/2026

Bodh Raj and others

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

Through: Mr. Sachin Gupta, Adv.
Ms. Arsha Sharma, Adv.

vs

Vijay Kumar

..... Respondent(s)

Through: Mr. Ajay Bakshi, Adv.

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

ORDER
05.10.2026

1. The petitioners, through the medium of the present petition, has challenged order dated 24.12.2025 passed by the learned Additional District Judge, Jammu (hereinafter to be referred as the appellate court). Challenge has also been thrown to order dated 26.09.2023 passed by the learned Sub Judge, Jammu (hereinafter to be referred as the trial court)
2. Vide order dated 26.09.2023, the learned trial court has dismissed the application of the petitioners/defendants under Order VII Rule 11 of the Code of Civil Procedure(for short the Code) seeking rejection of the plaint. Vide order dated 24.12.2025, passed by the learned appellate court, the appeal filed against order dated 07.07.2025 passed by the learned trial court thereby allowing the application of the respondent/plaintiff under Order XXXIX Rules 1 and 2 of the Code, has been dismissed.

3. It appears that the respondent/plaintiff filed a suit for Permanent Prohibitory Injunction against the petitioners (defendants therein) before the trial court seeking an injunction restraining the petitioners/defendants from interfering or intermeddling into the peaceful possession of the land measuring 16 marlas falling under khasra No. 415 situated at Chak Hasal, Tehsil Bishnah, District Jammu. It was pleaded by the plaintiff/respondent that he was in possession of the suit land as the same was allotted to his uncle, who had died issueless, whereafter he had come into possession of the suit land. It was also pleaded that the respondent/plaintiff had constructed residential house over the said land and the rest of the suit land was used as a pathway by the respondent/plaintiff and his family members. It was further pleaded that the defendants/petitioners have no concern or interest with the suit land but they are trying to interfere in his possession over the said land.
4. The defendants(petitioners herein) contested the suit by filing their written statement. In their written statement, the defendants/petitioners raised preliminary objection with regard to the maintainability of the suit on the ground that the land in question is Evacuee Land, as such, the civil court has no jurisdiction to entertain the suit in view of section 31 of the J&K Evacuees (Administration of Property) Act, 1949 (for short the Act of 1949). On merits, it was submitted by the defendants/petitioners that the front portion of land under khasra No. 414 has been sold by the plaintiff/respondent to a third person and the

pathway, which leads to the home of the plaintiff/respondent is approximately 6 feet wide and the same is located in khasra No. 414 and not in khasra No. 415. It was contended that the plaintiff/respondent intends to occupy the land of the petitioners/defendants under the garb of interim order passed by the learned trial court. It was further contended that the land of the defendants/petitioners is comprised in khasra Nos. 445, 446 and 447 and after selling a portion of his land in khasra No. 414, the plaintiff/respondent is trying to encroach upon the land of the defendants/petitioners.

5. It seems that the petitioners had also filed an application Order VII Rule 11 of the Code before the learned trial court seeking rejection of the plaint on the ground that the suit of the plaintiff/respondent is barred in terms of section 31 of the Act of 1949.
6. The learned trial court initially at the time of presentation of the plaint had, vide order dated 15.07.2022 directed the parties to maintain status *quo* with regard to the suit land and later on vide order dated 07.07.2025, the learned trial court, after analyzing the pleadings of the parties and after hearing the parties, made order dated 15.07.2022 absolute. While passing the said order, the learned trial court held that the plaintiff/respondent has carved out a *prima facie* case in his favour.
7. The application of the petitioners/defendants under Order VII Rule 11 of the Code came to be dismissed by the learned trial court in terms of order impugned dated 26.09.2023 by holding that the suit is

maintainable and that bar contained in section 31 of the Act of 1949 is not attracted to the present case.

8. The petitioners filed an appeal against order dated 07.07.2025 passed by the learned trial court, whereby the application of the plaintiff/respondent under Order XXXIX Rules 1 and 2 of the Code was allowed. However, the appeal came to be dismissed by the learned appellate court vide impugned order dated 24.12.2025 by holding that the order passed by the learned trial court is well reasoned and that the same does not call for any interference.
9. The petitioners have challenged impugned orders dated 24.12.2025 passed by the appellate court and order dated 26.09.2023 passed by the learned trial court primarily on the ground that the suit filed by the plaintiff/respondent is not maintainable as the same is hit by section 31 of the Act of 1949. It has been contended that the suit property is an Evacuee Property and in terms of section 15 of the Act of 1949, no injunction can be granted by a civil court in respect of the said property. According to the petitioners/defendants, this aspect of the matter has not been properly appreciated by the learned trial court and the learned appellate court. It has been contended that the plaintiff/respondent is neither the owner nor has he any right over the land falling under khasra No. 415, which is clear from the revenue record, as such, there is no *prima facie* case in favour of the plaintiff.
10. I have heard learned counsel for the parties and perused record of the case.

11. In the first instance, it would be appropriate to deal with the objection raised by the petitioners with regard to the maintainability of the suit on account of section 31 of the Act of 1949. It is the contention of the petitioners that section 31 of the Act of 1949 bars the jurisdiction of a civil court in matters in which the Custodian General or the Custodian has been empowered under the said Act. It has further been contended that as per section 15 of the Act of 1949, no injunction can be granted in respect of a property vested in the Custodian.
12. In the above context, if we have a look at a revenue record, placed on record by the plaintiff/respondent along with the plaint before the trial court, it appears that the suit land i.e. the land falling under khasra No. 415 measuring 16 marlas is shown to be allotted in the name of Rasilla and it is also recorded in the khasra girdhawari that the said land is under the cultivation of Dhanna, the brother of allottee Rasilla. It is the case of the plaintiff that Rassila has died issueless and after the death of his brother, Dhana, who happens to be father of the plaintiff, has come into possession of the suit land. From the revenue record, it is clear that the land in question is an Evacuee Land.
13. The issue that arises for determination is as to whether a suit for injunction filed by an allottee or his successor in interest against a private person, who intends to interfere in his possession, is maintainable.
14. Section 31 of the Act of 1949, which is at the center of controversy, reads as under:

“31. Jurisdiction of Civil Courts barred in certain matters.— Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction—

(i) to entertain or adjudicate upon any question whether any property is or is not evacuee property or whether an evacuee has or has not any right or interest in any evacuee property ; or

[(ii) to question the legality of any action taken by the Custodian General or the Custodian under this Act ;]

(iii) in respect of any matter which the [Custodian General or the Custodian] is empowered by or under this Act to determine.”

15. From a perusal of the aforesaid provision, it is clear that a civil court does not have jurisdiction to entertain or adjudicate upon a question whether or not any property is an evacuee property and whether or not evacuee has any right or interest in any evacuee property. The civil court can also not go into the question with regard to the legality of any action taken by the Custodian General or the Custodian under the Act of 1949. Similarly, a matter, which can be determined by the Custodian General or the Custodian under the Act of 1949, would not be cognizable by a civil court.
16. In the present case, the respondent/plaintiff is seeking an injunction against the petitioners/defendants in respect of an evacuee land allotted in favour of his predecessor in interest as he is under the apprehension that the defendants may encroach upon the said land. The issue involved in the suit does not involve determination of the question whether the property is or is not an evacuee property or whether the parties have any interest in the evacuee property nor does it involve the determination of the question with regard to the legality of any action

taken by the Custodian General or the Custodian under the Act of 1949.

It also does not pertain to any matter which is cognizable by the Custodian General or the Custodian under the Act of 1949.

17. That takes us to the provisions contained in section 15 of the Act of 1949, which reads as under:

“15. Exemption from attachment, sale etc. —(1) No property which has vested in the Custodian shall be liable to attachment, distress or sale in execution of a decree or [order of a Court or of any other authority], and no injunction in respect of any [such property shall be granted by any Court or other authority.]

(2) Any attachment or injunction subsisting on the commencement of this Act in respect of any evacuee property which has vested in the Custodian shall cease to have effect on such commencement, and any transfer of such property under the orders of a Court or any other authority made after such date as may be specified in this behalf by the Government by notification in the [Official Gazette], shall be set aside if an application is made to such Court or authority by or at the instance of the Custodian within three months from the commencement of this Act.”

18. From a perusal of the aforesaid provision, it appears that a property which has been vested in Custodian is exempted from attachment and it is also exempted from an injunction by a court or any authority. The provision nowhere bars a civil court from passing an injunction order in favour of an allottee of evacuee property who is apprehending encroachment upon the said property from a private person. It is true that section 15 of the Act of 1949 debars a court from passing an order of injunction in respect of an evacuee property against the Evacuee Department but so far as an injunction against the private property is concerned, section 15 of the Act of 1949 would not come into play.

19. The aforesaid issue has been conclusively determined by this Court in the case of **Tariq Hameed Kara vs. Ghulam Mohi-Ud-Din Wani and others, 2005 SLJ 358**. While determining this question, this Court after taking note of provisions contained in sections 15 and 31 of the Act of 1949, has observed as under:

“7. This provision, as is clear from its plain language provides that when any action is required to be taken by the Custodian or Custodian General under the Act the legality of such a question cannot be challenged before a Civil Court nor can the Civil Court decide regarding any right in respect of evacuee property as the questions as to whether the property is or is not an evacuee property is required to be decided, under the Act, by the authorities only. The scheme of the Act however, shows that while the authorities under the Act have got powers to deal with and determine certain issues including the questions regarding the nature of property, the authorities have got no powers to grant or refuse injunction to preserve or protect the property, against a private party.

8. This section, therefore, bars jurisdiction of a Civil Court only in matters which are specifically mentioned in the Section. Adjudication of matters falling beyond this Section will definitely fall within the jurisdiction of Civil Court.

9. Ld. Counsel for the respondents has taken resort to Section 15 which according to him, excludes the jurisdiction of Civil Court in respect of attachment, distress or sale and execution of decree. The Ld. Counsel referring to the word injunction, would argue that since no injunction could be passed under the said section, a suit for perpetual injunction would not lie before a Civil Court . The argument of the Ld. Counsel is devoid of any merit. A conjoint reading of Section 15 and 31 bars the jurisdiction of Civil Court only in matters which fall within the competence of Custodian or the Custodian General. Similarly Section 15 on the other hand bars the grant of remedy in certain cases not the jurisdiction. It nowhere bars the jurisdiction of civil Court but exempts the Evacuee property from attachment, distress, sale or injunction. Exemption of the property does not amount to exclusion of jurisdiction of the civil Court.

10. The suit before the trial Court is a civil suit between private individuals where neither the order passed by the authorities under the Act nor any issue relating to the exercise of jurisdiction by these authorities is involved. It will by no stretch of imagination fall either within section 15 or Section 31 of the Act.

20. Thus, from the foregoing analysis of legal position, it is clear that sections 15 and 31 of the Act of 1949 do not bar jurisdiction of the civil court to hear a suit for injunction *inter se* private parties. The present suit is, therefore, not barred by the provisions of section 31 of the Act of 1949. In this view of the matter, the trial court has rightly refused to reject the plaint of the respondent. The impugned order dated 26.09.2023 passed by the learned trial court, as such, does not call for any interference.

21. So far as order dated 07.07.2025 of the learned trial court, whereby the interim injunction in favour of the plaintiff/respondent has been made absolute, which order has been upheld by the learned appellate court by virtue of impugned order dated 24.12.2025, is concerned, the same also does not call for any interference because the revenue record placed on file of the trial court clearly depicts that the land measuring 16 marlas comprised in khasra No. 415, which is the subject matter of the suit is shown to be in possession of the father of the plaintiff/respondent. There is a presumption of correctness attached to the revenue entries. Therefore, *prima facie* it appears that the plaintiff/respondent is in possession of the suit land, hence his possession over the said land has to be protected till the disposal of the suit.

22. The learned trial court has rightly exercised the jurisdiction to protect the possession of the plaintiff/respondent over the suit land against the interference from the defendants/petitioners which order has been upheld by the learned appellate court. This Court, while exercising its supervisory jurisdiction under Article 227 of the Constitution, cannot sit in appeal over the discretion exercised by the courts below. Even if, another view may be possible on the basis of the material on record, still then, as long as the view adopted by the learned trial court as has been upheld by the learned appellate court is one of the possible views, it would not be open to this Court to interfere in the impugned orders passed by the courts below.
23. For all what has been said, analyzed and discussed hereinabove, I do not find any merit in this petition. Accordingly, the same is dismissed.

(SANJAY DHAR)
JUDGE

Jammu
05.10.2026
Rakesh PS

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No