

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

Case:- CR No. 7/2023
CM Nos. 6539/2025 & 1022/2023

Chaya Sharma & Ors. Petitioner(s)

Through: Mr. Vikram Arora, Advocate.

Vs

Madhu & Ors. Respondent(s)

Through: Mr. Sumit Moza, Advocate.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(03.06.2026)

1. Heard learned counsel for the parties.
2. Three petitioners herein commenced a civil suit on file No. **9/Civil of 2020** dated **20.05.2020** before the court of learned Subordinate Judge (CJM), Poonch.
3. In their said civil suit, the petitioners named three respondents herein as defendants.
4. In their suit, the petitioners claimed a decree for permanent prohibitory injunction with respect to suit plot No. 2 IE (70' x 50') situated in the Industry Estate, Poonch which was originally allotted in year 1989 in favour of Sh. Surjeet Bakshi, the predecessor-in-interest of the respondents.
5. In their civil suit, the petitioners sought decree of permanent prohibitory injunction purportedly on the claim that the holder of suit plot-Sh. Surjeet Bakshi had purportedly transferred the same in favour of Sh. Dawarika Nath, the predecessor-in-interest of the

petitioners on the basis whereof the petitioners claimed that their predecessor-in-interest-Sh. Dawarika Nath had entered into possession of the said industrial plot and which now admits of no interference from the end of the respondents.

6. The respondents appeared in said civil suit, filed their written statement and also filed an application under Section 151 of the Code of Civil Procedure, 1908.

7. In their written statement, the respondents were said to have taken an exception to the maintainability of the suit on the premise on which the petitioners came forward with the suit claim.

8. In response to said application so filed by the respondents invoking section 151 of the Code of Civil Procedure, 1908, the trial court of learned Subordinate Judge, Poonch, by way of an order dated **11.02.2023**, came to reckon the suit of the petitioners worthy of dismissal by reference to section 151 of the Code of Civil Procedure, 1908 and also Order 7 Rule 11(a) of the Code of Civil Procedure.

9. The suit of the petitioners, thus, came to be dismissed with costs of Rs. 20,000/- imposed upon the petitioners.

10. It is against aforesaid outcome of their civil suit in the manner as accorded by the court of Subordinate Judge (CJM), Poonch that the petitioners came forward with the present revision petition invoking section 115 of the Code of Civil Procedure, 1908.

11. The present revision petition was filed on **19.02.2023**.

12. Mr. Sumit Moza, learned Advocate appearing for the respondents takes an exception to the very maintainability of the

present revision petition under section 115 of the Code of Civil Procedure, 1908 on the plea that against dismissal of the suit effected by the impugned order which amounts to a decree as the impugned order records itself about the fact of preparation of the decree sheet, the petitioners ought to have availed remedy of a civil 1st appeal under section 96 of the Code of Civil Procedure, 1908 rather than availing the revisional jurisdiction of this Court under section 115 of the Code of Civil Procedure, 1908.

13. Though the objections raised by Mr. Sumit Moza, learned Advocate for the respondents is well meaning and, if taken literally, should result in dismissal of the present revision petition but when this Court comes to consider the manner in which the court of Subordinate Judge (CJM), Poonch has come to exercise jurisdiction purportedly by quoting and citing Order 7 Rule 11 (a) of the Code of Civil Procedure, 1908 which otherwise was never invoked even by the respondents in their application, this Court is inclined to switch over to its supervisory jurisdiction under article 227 of the Constitution of India to accord disposal to the present matter.

14. The fact that the respondents had filed a written statement and had taken exception to right to sue of the petitioners on the basis of their purported claim on an affidavit qua the suit property, the trial court should have been well advised to frame the issues in the suit and by reckoning the maintainability of the suit on the right to sue of the petitioners as preliminary issue to then accord disposal to the suit.

Said course of action would have been in accordance with the spirit of adjudication as envisaged under the Code of Civil Procedure, 1908.

15. There cannot be a shortcut and abortive disposal of a civil suit literally in the manner in which the court of Subordinate Judge (CJM), Poonch came to accord even if this Court were to feel convinced that the premise on which the court of Subordinate Judge (CJM), Poonch proceeded to reckon the suit of the petitioners worth dismissal is correct.

16. Accordingly, this petition is disposed of by setting aside order dated **11.02.2023** and consequently directing the court of Subordinate Judge (CJM), Poonch to restore the suit to its original number whereupon issues to be framed. Preliminary issue/s, if found involved about maintainability of the suit, to be framed and then said issue/s to be taken up for according adjudication qua the preliminary issue/s so framed.

17. Needful exercise to be done at the end of the court of learned Subordinate Judge (CJM), Poonch by or before **31.07.2026**.

18. The instant petition is **disposed of**, accordingly.

19. A copy of this order be forwarded by the Registrar Judicial, Jammu to the court of Subordinate Judge (CJM), Poonch for notice and compliance.

(RAHUL BHARTI)
JUDGE

JAMMU
03.06.2026

Shivalee

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