

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

Reserved on 14.09.2026
Pronounced on 18.09.2026
Uploaded on: 18.09.2026
Whether the operative part or full
Judgment is pronounced: **Full**

CM(M) No. 35/2026

Pardeep Kumar

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

Through: Mr. Vikram Sharma, Sr. Adv. with
Mr. Sachin Dev Singh, Adv. and
Mr. Sanpreet Singh, Adv.

vs

Chanchala Devi and others

..... Respondent(s)

Through: Mr. R. K. S. Thakur , Adv
Ms. Anandita Thakur, Adv.

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

JUDGMENT

1. The petitioner, through the medium of present petition, has invoked supervisory power of this Court under Article 227 of the Constitution to lay challenge to order dated 12.01.2026 passed by the Court of learned Munsiff Katra(hereinafter to be referred as the trial court), whereby in a case tilted, Chanchala Devi and others vs. Pardeep Kumar, while allowing the application of the respondents under Order XVI Rules 1 and 7 of the Code of Civil Procedure(CPC) read with section 151 CPC, a direction has been issued to the Partwari Halqa, concerned to remain present on the next date of hearing for his further examination in continuation of his part examination conducted on 03.02.2025 and to produce attested copies of

revenue record in form of khasra girdhawari from the year 1960 to 2011 in respect of the suit land in addition to earlier summoned record of Jamabandi for the year 1969-1970, Jamabandi for the year 1997-1998 and khasra girdawari for kharif 2011.

2. It appears that a suit came to be filed by the predecessor-in-interest of the respondents, Sh. Jagdish Raj, against the petitioner, before the court of learned trial court seeking a declaration that the plaintiff (predecessor-in-interest of the respondents) is the owner in possession of the uncultivable land measuring 43 kanals 06 marlas under lying khasra No. 5 (new) and khasra No. 99 (old) situated at Village Nalley, Tehsil and District, Reasi and that the defendant (petitioner herein) has not acquired any right or title whatsoever in respect of the aforementioned suit land. A consequential relief to correct the entries in the record of rights and khasra girdawaries which have been allegedly made contrary to the factual position, was also sought by the plaintiff.
3. It was pleaded by the plaintiff that his grandfather, namely, Sh. Phesan was owner in possession of the suit property and the house situated in Village Nalley, District Reasi and he had left behind four sons. The suit property after the death of Phesan was inherited by his two surviving sons, namely, Devi Ditta and Sadhu. Devi Ditta is stated to have died unmarried. Thus, the entire suit property devolved upon Sadhu, the father of the original plaintiff-Jagdish Raj(predecessor-in-interest of the respondents herein). According to the plaintiff, the land in question was unculturable as has been reflected in the Jamabandi for the year 1969-70.
4. It was pleaded by the plaintiff(predecessor-in-interest of the respondents)

that the defendant(petitioner herein) or his predecessors have no land or property in Village Nalley but on 20.12.2011, he came on spot and brought some dry bushes and put on the suit land with a view to fence the suit land on one side. This act of the defendant(petitioner herein) was seriously resisted by the plaintiff and his sons. According to the plaintiff, the defendant conveyed to him that entries in the revenue record in respect of the suit land stood in his name and he also asserted his ownership right over the land on the basis of adverse possession. The plaintiff is stated to have obtained copies of the revenue record and he came to know that in the Jamabandi for the years 1997-98 while his name has been shown as owner of the suit land, the name of the defendant, petitioner herein has not been reflected. However, on obtaining a copy of khasra girdhawari/missal haqiat for 1997-98 on 23.12.2011, the plaintiff was astonished to know that the name of the defendant has been reflected under the cultivation column of Jamabandhi/Missal Haqiat and khasra girdhawaries.

5. It was pleaded that the entries have been made without providing the opportunity of being heard to the plaintiff. The same were made by fraudulent means. It was also pleaded that during settlement proceedings, the plaintiff came to know that the khewat, khata and khasra numbers of the suit land have been changed and nobody had disputed the ownership and possession of the plaintiff over the suit land at the relevant time. According to the plaintiff, the suit land is unculturable for the last 80 years, which is reflected in the record of rights and khasra girdhawaries. Thus, the question of cultivation of the said suit land by the defendant does not arise. In short, case of the plaintiff was that he has been in peaceful possession of

the land in question since time immemorial but the defendant had managed an entry in the revenue record for the year 1997-98.

6. The defendant(petitioner herein) filed his written statement, in which, he took a stand that he had purchased the suit land from the plaintiff for a sale consideration of ₹80,000/-, whereafter the possession of the suit land was transferred by the plaintiff in his favour, which fact is reflected in the revenue record since the year 1989. It was contended by the defendant that he is enjoying the suit land as an owner in possession since the year 1989 as the plaintiff has himself surrendered the possession of the suit land in his favour. It was contended that because the prices of the land in and around Katra Town have escalated, the plaintiff has become greedy and he has started demanding more amount from the defendant.

7. It appears that the learned trial court on the basis of the pleadings of the parties, framed two preliminary issues on 05.10.2013. Thereafter, on 19.02.2018, the trial court framed more issues in the suit, which are reproduced as under:

- i) Whether plaintiff is owner in possession of the suit land? (OPP)
- ii) Whether defendant is interfering in possession of plaintiff over suit land? (OPP)
- iii) Whether the revenue entries have been made fraudulently and without hearing the plaintiff? (OPP)
- iv) Whether the suit is hit by section 32, Land Revenue Act and this court has no jurisdiction to try the suit? (OPD)
- v) Whether the suit is time barred? (OPD)
- vi) Relief? (O. P. Parties)

8. It seems that during the trial of the case when the evidence of the plaintiff was going on, at the instance of the plaintiff, the statement of concerned Patwari(PW-Sanjeev Kumar) was recorded on 03.05.2025. It is pertinent to mention here that the Patwari was called as a witness on the basis of

summons issued by the trial court and he was directed to produce the record of Jamabandhi 1969-70 and Jambandi/Missal Haqait for the year 1997-98, and khasra girdawari for kharif 2011 of the suit land falling under khasra No. 5 (new) and khasra No. 99 (old) measuring 67 kanals 17 marlas situated at Village Nalley, Tehsil and District, Reasi. The witness appeared before the Court along with record and while recording his examination-in-chief, the counsel appearing for the plaintiff elicited answers to the question with regard to the position reflected in respect of the suit land in the revenue record from the years 1960-1991. At this stage, an objection was raised by the learned counsel appearing for the defendant that because the plaintiff had not produced copies of the khasra girdhawaries for the year 1960-1991 along with the plaint nor has he produced these documents in the court, as such, questions on these aspects of the matter with reference to the original record cannot be put to the witness. The statement of the Patwari was, therefore, deferred for deciding this objection.

9. It appears that at this stage, the plaintiff came up with an application under Order XVI Rules 1 and 7 of the CPC read with section 151 CPC for summoning of the Patwari Halqa Chandwa, along with khasra girdhawari Registers from the year 1960 onwards till 2011. The said application came to be allowed by the learned trial court by virtue of impugned order dated 12.01.2026(supra).
10. The petitioner/defendant has challenged the impugned order before this Court on the grounds that the same is against the mandate of law and that it negates the provisions contained in Rules 1, 2, 4, 5, 6, and 7 of Order XVI CPC. It has been contended that Rule 7 of Order XVI CPC does not carve

out an exception nor does it supersede the docket issued by the court in terms of Rule 5 of Order XVI CPC. It has been contended that the application filed by the plaintiff does not point out any reason or cause as to why the certified copies of the record of the khasra girdhawaries were not placed on record by him before the Court at an appropriate stage. It has also been contended that the learned trial court has no competence/jurisdiction to direct the patwari in terms of Order XVI CPC to produce the true copies of the revenue record. According to the petitioner, the order impugned suffers from patent illegality and as such, it deserves to be set aside.

11. I have heard learned counsel for the parties and perused the record, including the record of the trial court.

12. If we have a look at the impugned order passed by the learned trial court, while passing the said order, the learned Magistrate has exercised his powers under Rule 7 of Order XVI CPC, which reads as under:

7. Power to require persons present in Court to give evidence or produce document.—Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

13. From a perusal of the aforesaid provision, it is clear that the Court has the discretion to require a person present in Court to give evidence or to produce any document then and there in his possession or power. The grievance of the petitioner is that the discretion exercised by the learned trial court negates the provisions contained in Rules 1, 2, 4, 5, 6 and 7 of Order XVI CPC.

14. While Rule 1 of Order XVII CPC mandates the parties to file a list of

witnesses, whom they propose to call within a period of fifteen days. It also requires a party to file an application for summoning all those witnesses with regard to whom the permission of the Court is required. Rule 2 of Order XVI CPC makes it obligatory upon a party applying for summons to pay into Court the expenses to defray the travelling and other expenses of the person summoned. Rule 4 of Order XVI CPC takes care of the situation where insufficient diet expenses have been deposited by a party in respect of a witness. Rule 5 of Order XVI CPC mandates that summons for attendance for a person to give evidence or produce a document should specify the time and place at which, he is required to attend, whereas Rule 6 of Order XVI CPC provides that if a witness is called for only producing a document, it would be sufficient, if he produces the document instead of attending the Court personally to produce the same.

15. This Court fails to comprehend as to which of these provisions runs contrary to powers given to the Court under Rule 7 Order XVI CPC. The said provision only vests powers with the Court to require any person, who is present in Court, either pursuant to summons issued by the Court or otherwise, to give evidence or to produce any document then and there in his possession. It is a provision independent of the provisions contained in Rules 1 to 6 of Order XVI CPC. Thus, it cannot be stated that the learned trial court, while exercising power under Rule 7, has negated the provisions contained in Rules 1 to 6 of Order XVI of CPC.

16. It is a fundamental legal principle that a party should not be prevented from presenting the best possible evidence in support of its case. In the context of present case, it has been pleaded by the plaintiff that he and his

predecessors-in-interest have been in peaceful possession of the suit land from the time immemorial. Along with the plaint, he may have produced copies of the revenue extracts for the year 1969-70 and for the years 1997-98 as also for the year kharif 2011 only, but it has been the consistent case of the plaintiff that he and his ancestors have been in ownership and possession of the suit land since long. Thus, by examining the Patwari concerned, who is custodian of the revenue record, with reference to the entries in revenue record for previous years, the plaintiff has not travelled beyond his pleadings nor has he tried to introduce a new case.

17. So far as direction with regard to the production of copies of the revenue record, with reference to which, the plaintiff has examined or intends to examine the Patwari concerned, it is open to the Court to obtain copies of those documents from the original revenue record so that entries made in the original revenue record are read in evidence at the time of final disposal of the case. In any case, the petitioner/defendant is not going to be prejudiced by production of these documents or by examination of the Patwari by the plaintiff on these aspects of the matter as he would have an opportunity of cross examining the Patwari with reference to the record produced and he would also have the opportunity of leading evidence in rebuttal.

18. The order passed by the learned trial court in exercise of powers contained in Order XVI Rules 1 and 7 CPC, is discretionary in nature. Therefore, even otherwise, this Court, while exercising its powers under Article 227 of the Constitution, would be loathe to interfere with the said discretionary power exercised by the Court below unless it is shown that the exercise of

such power is patently illegal.

19. As already stated the discretionary power exercised by the learned trial court in passing the impugned order is perfectly in accordance with law and the impugned order has been passed with a view to do substantial justice which is the aim of the justice delivery system, as such, the same does call for any interference by this Court.

20. For all what has been said, analysed and discussed hereinabove, the present petition is found to be bereft of any merit. Accordingly, the same is dismissed.

(SANJAY DHAR)
JUDGE

Jammu
18.09.2026
Rakesh PS

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