

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

CSA No. 20/2008

Date of pronouncement: 30.01.2026

Date of uploading :

Union of India through Defence Estate
Officer, Jammu Circle, Jammu.

.....Applicant(s)/Petitioner(s)

Through :- Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC

v/s

Saida Bibi d/o Sh. Mohd. Din
R/o Raipur, Jammu

.....Respondent(s)

Through :- None

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER (ORAL)

1. Having regard to the nature of controversy involved, this Court vide order dated 22.05.2023 admitted this appeal on the following substantial question of law:-

“Whether both the Courts below committed perversity while overlooking the non-impleadment of Government (Union of India) as a party defendant in the suit and in the process passed impugned judgments and decrees.”

2. Briefly stated, the facts that have given rise to the framing of the aforesaid question of law are that the defendant filed a suit for declaration and permanent prohibitory injunction restraining the appellant herein from interfering or causing any interference in the peaceful possession of the respondent on the land measuring 04 kanals comprised in khasra no. 309 min situated at village Raipur Tehsil Jammu [“**the suit property**”].

3. It was the case of the respondent in the plaint that that the appellant under a misconception that the suit property was part of khasra no. 181, called upon the respondent to vacate the possession of the suit land, which constrained the respondent to file a civil suit in the year 1990 which was disposed by the Court of learned Sub Judge, Jammu [**“the trial Court”**] on the statement made by the appellant that the respondent would not be evicted otherwise than by adopting due process of law. The trial Court also reserved a liberty to the respondent to apply for injunction in case the appellant would repeat the act of interfering in her possession.
4. It was further pleaded in the plaint that the appellant repeated the acts of interfering with the possession of the respondent over the suit property which constrained her to file fresh suit for declaration and perpetual injunction before the trial Court. The appellant, Estate Officer, despite service chose not to appear and contest the suit and, accordingly, the suit was decreed by the trial Court in ex parte.
5. The trial Court did not grant decree of declaration declaring the respondent as owner in possession of the suit land, but issued a permanent prohibitory injunction restraining the appellant from interfering in the peaceful possession of the respondent over the subject land providing further that the respondent shall not be evicted except by due process of law.
6. An appeal taken by the appellant herein before the 2nd Additional District Judge, Jammu [**“the 1st Appellate Court”**] also failed. This is how the appellant is before this Court in the Civil Second appeal urging to set aside the judgments and decrees of both the Courts below on the ground that, in the absence of Union of India being a party defendant in the suit, a suit filed by the respondent could not have been decreed.
7. Having heard learned counsel for the appellant and perused the material on record, it is necessary to first set out Rule 5-A of Order XXVII of Civil Procedure Code 1997 as was then applicable.

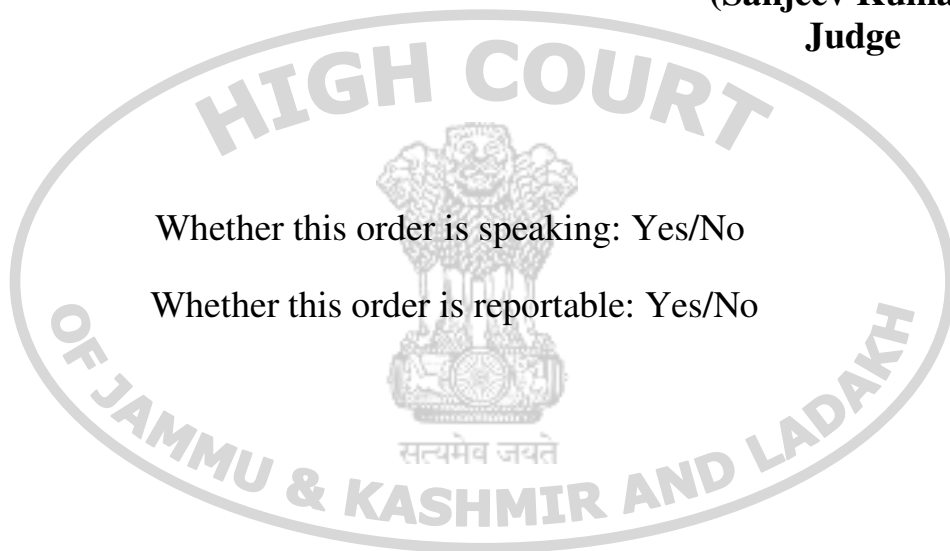
5-A. Government to be jointed as a party in a suit against a public officer.- Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be jointed as a party to the suit.

8. From a plain reading of Rule 5-A, it is abundantly clear that in a suit instituted against a public officer for damages or other relief **in respect of any act alleged to have done by him in his official capacity, the Government is required to be joined as party in the suit mandatorily.**
9. In the given facts and circumstances of the case and the concurrent findings of fact returned by two Courts below, it needs to be seen whether the act of interference by the appellant in the peaceful possession of the respondent over the suit property, without proceeding in accordance with law, could be construed to be an act done by the appellant in the discharge of his official duties.
10. The answer to this question has to be no and emphatic no. The Estate Officer has been conferred with specific powers for evicting unauthorized occupants of public premises.
11. Public premises (Eviction of Unauthorized Occupants) Act, 1971 [“the Act of 1971”] lays down elaborate procedure for evicting the unauthorized occupants of public property and confer specific powers on the Estate Officer. The Estate Officer has not been given any authority to forcibly evict any unauthorized occupants of public premises and take law in his/her own hands.
12. If any Estate Officer appointed under the Act of 1971 proceeds in a manner not provided under law, his act does not fall within the purview and ambit of official duties nor can it be said that he/she is acting in his/her official capacity
13. In these circumstances, the Union of India was not a necessary party and the suit could have been held to be bad for non-joinder of the necessary parties.

14. That apart, looking to the nature of decree passed by the trial Court and upheld by the 1st Appellate Court, there should have been no grievance to the appellant to come in second appeal.
15. Admittedly, respondent has been in possession of the suit property for the last several decades and, therefore, cannot be thrown out otherwise than in due course of law.
16. The trial court has in its decree clearly reserved this right to the appellant. Instead of filing the second appeal, the appellant ought to have proceeded against the respondent in accordance with law, if she was in unauthorized occupation of the subject land, more particularly, when her suit for declaration had failed before the trial Court.
17. For all these reasons, I find no merit in this appeal and the same is, accordingly, dismissed.

(Sanjeev Kumar)
Judge

JAMMU
30.01.2026
Manik



Whether this order is speaking: Yes/No

Whether this order is reportable: Yes/No