

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

Case:-MA No. 14/2026

Gurudwara Prabhandak
Committee & Ors.

.....Appellants

Through :- Ms. Vasudha Sharma, Advocate

v/s

Nagesh Padha

.....Respondent

Through :- Mr. Mohinder Sharma, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
05.08.2026

1. The petitioners, who are defendants in the suit titled "*Nagesh Padha v. Gurudwara Prabhandak Committee & Ors.*", pending before the Court of Principal District Judge, Samba (hereinafter referred to as "the trial Court"), have called in question the order dated 10.04.2026, whereby the parties have been directed to maintain status quo with respect to the suit property comprising land measuring 2 kanals and 6 marlas falling under Khasra Nos. 40 and 40 min, Khata Nos. 33 and 34, Khewat No. 15, situated at Village Chak Shiba Khurd, Tehsil Vijaypur, District Samba.
2. The trial Court, while passing the impugned order, proceeded on the premise that the plaintiff could not be deprived of his rights in respect of land measuring 4 kanals and 10 marlas. It noticed that, out of the aforesaid land, 1 kanal and 14 marlas had been kept as a pathway to provide access to the land sold by the predecessor-in-interest of the

plaintiff and, therefore, the plaintiff could not, at that stage, be presumed to have lost his rights over the remaining land measuring 2 kanals and 6 marlas.

3. The principal ground urged by the petitioners in assailing the impugned order is that the plaintiff was never in possession of the suit land and that the same has throughout remained in their possession. It is contended that a boundary wall has also been raised around the suit land by the petitioners and their possession thereon stands corroborated by the report of the Commissioner.
4. It is further urged that neither the plaintiff nor his brother figures in the revenue record as being in possession of the suit land. The petitioners also seek to question the plaintiff's claim on the ground that his predecessor-in-interest had alienated land measuring 7 kanals and 10 marlas, which had vested in him under Sections 4 and 8 of the Agrarian Reforms Act, allegedly in contravention of the provisions of the said Act. Yet another ground of challenge is that the suit itself is barred under the provisions of the Tenancy Act. According to the petitioners, the father of the plaintiff had remained out of possession for more than six decades and, as such, whatever tenancy rights he may have possessed could not have survived thereafter.

5. It is also contended that the mere existence of an entry in the revenue record in the name of “Comrade Brick Kiln” would not establish the plaintiff’s possession over the suit land. According to the petitioners, the very nature of the reliefs claimed in the suit, namely, recovery of possession, damages and mesne profits for alleged unauthorized use and occupation of the suit land, belies the plaintiff’s assertion of possession. It is further submitted that the Gurudwara structure already stands raised and pillars have also been erected over the suit land. The order of status quo, however, has stalled further construction of a community hall, which, according to the petitioners, is intended for the use and benefit of the general public.
6. It is further argued that the presumption, if any, attaching to the entries in the Khasra Girdawari stands rebutted by the material relied upon by the plaintiff himself. Reference in this regard is made to the demarcation report, which records that no brick kiln exists on the spot. The report further indicates that, out of the land measuring 4 kanals, an area of 1 kanal and 14 marlas is recorded as *Gair Mumkin Pathway*, whereas the remaining 2 kanals and 6 marlas is in possession of the Gurudwara.
7. Learned counsel for the petitioners further submits that, once their possession over the suit land is not in dispute,

the direction to maintain status quo operates to their prejudice. It is submitted that the petitioners had undertaken construction of a community hall over the suit land for the use and benefit of the local public and the Sangat, who are stated to have contributed towards the construction of the Gurudwara building as well. The impugned order, according to the petitioners, has brought the construction to a standstill and has effectively deprived them of the beneficial use of the property despite their admitted possession thereof.

8. It is contended that when the plaintiff himself proceeds on the premise that the defendants are in possession of the suit property and has sought recovery of possession from them, the petitioners cannot, merely by virtue of an interim order, be prevented from using and occupying the property during the pendency of the suit. According to the petitioners, such a restraint cannot be justified unless and until the plaintiff establishes, in accordance with law, his right to recover possession of the suit property.
9. Learned counsel for the petitioners, during the course of arguments, submitted that the petitioners are willing to furnish an undertaking before the trial Court that any construction raised by them over the suit land during the pendency of the proceedings shall be entirely at their own

risk and responsibility. It is further submitted that, in the event the plaintiff ultimately succeeds in establishing his right to recover possession of the suit property, the petitioners shall remove/demolish, at their own cost, any structure raised by them thereon and shall not claim any equity on the basis of such construction.

10. *Per contra*, learned counsel appearing for the respondent/plaintiff sought to support the order impugned by contending that defendant No. 1 is a complete stranger to the suit property and that its occupation thereof is wholly unauthorized, being neither traceable to any allotment or conveyance nor to any other lawful source. It is submitted that the plaintiff has succeeded in establishing a prima facie title over the suit property before the trial Court. It is further pointed out that the plaintiff has also sought a decree of mandatory injunction for demolition/removal of the pillars allegedly raised by the defendants over the suit property. In these circumstances, according to learned counsel, the trial Court was justified in directing the parties to maintain status quo during the pendency of the suit.

11. Learned counsel for the respondent, placing reliance upon the judgment reported as 2010 (Punjab & Haryana) 1475, further contends that entries in the revenue record carrying a presumption of correctness cannot be lightly brushed

aside merely on the basis of a report obtained from the Patwari Halqa. It is, thus, urged that the revenue entries reflecting possession over the suit land have to be given due weight unless rebutted by cogent and legally admissible material.

12. Reliance is also placed upon the judgment reported as 2011 AIR SCW 3769 to contend that a demarcation report, by itself, cannot override or supersede duly maintained revenue entries. It is accordingly submitted that the petitioners cannot rely upon the demarcation report to dislodge the prima facie evidentiary value attaching to the revenue record and, therefore, no interference with the order of status quo is called for.
13. Having heard learned counsel for the parties at length and perused the material on record, what emerges is that the respondent/plaintiff traces his claim over the suit property to his predecessor-in-interest, who is stated to have purchased land measuring 11 kanals and 10 marlas in the name of "Comrade Brick Kiln" and to have remained in possession thereof. Out of the aforesaid land, an area measuring 7 kanals and 10 marlas is stated to have subsequently been sold by the predecessor-in-interest of the plaintiff to one Anu Gupta.

14. The revenue record further reveals that, by virtue of Mutation No. 101 attested under Section 8 of the Agrarian Reforms Act, land measuring 7 kanals and 10 marlas under Khasra No. 40 min came to be recorded in favour of the predecessor-in-interest of the plaintiff, whereas the remaining land continued to stand recorded in the ownership of one Dhana Ram. A portion of the remaining land has since been utilized for construction of a pathway/road, while the land measuring 7 kanals and 10 marlas, which had vested under the Agrarian Reforms Act, is stated to have subsequently been alienated. The spot inspection/demarcation report further records that land measuring 2 kanals and 6 marlas falls within the boundary wall of the Gurudwara, whereas an area measuring 1 kanal and 14 marlas is under a pathway.
15. There is, however, a serious dispute between the parties as regards the nature and duration of the petitioners' possession over the suit land. While the respondent/plaintiff maintains that the Gurudwara came into possession only in the year 2022, the petitioners assert that their possession is of long standing. The record does indicate that the petitioners or their predecessor-in-interest were tenants in respect of land measuring 7 kanals and 10 marlas, which subsequently vested in them by operation of

Sections 4 and 8 of the Agrarian Reforms Act. This circumstance lends prima facie support to the position that their initial possession over at least the aforesaid extent of land was in the capacity of tenants. Once proprietary rights in respect of 7 kanals and 10 marlas came to be conferred upon them under the Agrarian Reforms Act, the question whether any tenancy rights subsisted in their favour in respect of the remaining land is a matter which would necessarily have to be determined on the basis of the pleadings, revenue record and other evidence led before the trial Court.

16. It has also been urged that, in respect of the portion of land which has come under the pathway, there is nothing in the pleadings or the material placed on record to indicate that any acquisition proceedings were ever undertaken or that compensation was paid to the respondent/plaintiff or his predecessor-in-interest for such land.
17. The petitioners, on the other hand, contend that the remaining land, including the portion utilized for the pathway, was State land and had been permitted to be used by petitioner No. 1 for raising the Gurudwara. Significantly, however, it is fairly conceded on behalf of the petitioners that, except for their asserted possession, they do not possess any allotment order, conveyance or other document

evidencing any right, title or interest in respect of the suit land. The respondent/plaintiff, in contrast, relies upon the revenue record to demonstrate that his predecessor-in-interest was recorded in cultivating possession of the land. The competing claims of the parties, therefore, essentially rest upon the evidentiary value of the revenue entries, the nature and duration of the petitioners' possession and the legal effect of the material relied upon by them, all of which would fall for determination by the trial Court on the basis of evidence.

18. In **Rame Gowda (dead) by Lrs. v. M. Varadappa Naidu (dead) by Lrs. and another, (2004) 1 SCC 769**, discussing the Indian law on the subject the Apex Court observed as under:

“8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession, he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force

or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.”

19. In AIR 2019 SUPREME COURT 813 it was held as under:-

“The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser.

There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent or a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of animus possidendi. The nature of possession of the trespasser is to be decided based on the facts and circumstances of each case.”

20. At the interlocutory stage, this Court is neither required nor expected to finally pronounce upon the title of either party or the legal effect of the revenue entries, mutations, demarcation report or the provisions of the Agrarian Reforms Act and the Tenancy Act relied upon by the parties. Any conclusive finding on these questions would have the effect of prejudging issues which properly fall within the domain of the trial Court after the parties have had an opportunity to lead evidence.
21. What is, however, relevant for the present purpose is the admitted factual position obtaining on the spot. The plaintiff himself seeks, inter alia, recovery of possession of the suit property from the defendants, besides damages/mesne profits for its alleged unauthorized use and occupation. The demarcation/spot inspection report also records that the land measuring 2 kanals and 6 marlas is presently within the boundary wall of the Gurudwara. Thus, for the limited purpose of deciding the application for interim relief, the

physical possession of the petitioners over the suit land cannot be ignored.

22. At the same time, mere possession cannot, by itself, confer upon the petitioners an unrestricted right to materially alter the nature and character of the suit property during the pendency of the litigation. This assumes significance because the petitioners admittedly do not possess any allotment, conveyance or other document evidencing title or an independent right to raise construction over the suit land, whereas the plaintiff has placed reliance upon revenue entries in support of his claim. Whether those entries ultimately establish the right asserted by the plaintiff is a matter for trial, but the claim cannot, at the present stage, be regarded as wholly illusory so as to permit irreversible alteration of the suit property. Reliance on the precedents cited by respondent is totally misplaced.

23. The object of an interim injunction is to preserve the subject matter of the suit and to ensure that the final adjudication is not rendered ineffective by acts undertaken during the pendency of the proceedings. At the same time, an interim arrangement ought not to travel beyond what is reasonably necessary for protection of the competing rights of the parties. The Court is required to strike a balance so that neither party is permitted to create an irreversible situation

to the prejudice of the other before their substantive rights are adjudicated.

24. In the present case, a blanket order directing maintenance of status quo has the effect of restraining the petitioners even from dealing with property which is admittedly in their physical possession. On the other hand, permitting construction without adequate safeguards may materially change the nature of the suit property and may give rise to further equities and complications in the event the plaintiff ultimately succeeds. The interests of justice would, therefore, be better served by suitably modifying the interim arrangement rather than either maintaining an absolute restraint or permitting unrestricted construction.
25. The statement made on behalf of the petitioners that they are prepared to undertake that any construction raised during the pendency of the suit shall be entirely at their own risk and cost and that no equity shall be claimed on the basis thereof assumes significance in this regard. Such an undertaking, if made binding upon the petitioners and coupled with appropriate safeguards against alienation or creation of third-party rights, would substantially protect the plaintiff against the possibility of the construction being relied upon to defeat or dilute the relief that may ultimately be granted in his favour.

26. Accordingly, without expressing any opinion on the merits of the respective claims of the parties, this petition is disposed of by modifying the order dated 10.04.2026 passed by the trial Court to the following extent:

(i) The petitioners/defendants shall be permitted to proceed with construction over the suit land to the extent of laying of a single floor only, to be used for convening of Sangat only, after filing before the trial Court an unconditional undertaking, duly supported by an affidavit, that the construction so raised by them during the pendency of the suit shall be entirely at their own risk, cost and responsibility;

(ii) the petitioners shall specifically undertake that, in the event the respondent/plaintiff ultimately succeeds in obtaining a decree entitling him to possession of the suit property, they shall, without claiming any equity, compensation or other right on account of the construction so raised, remove/demolish the same at their own cost to the extent required for implementation of the decree;

(iii) no construction raised during the pendency of the suit shall create or be treated as creating any equity in favour of the petitioners, the Sangat, contributors, donors or any other person;

(iv) the petitioners shall not alienate, transfer, encumber, lease out or otherwise create any third-party interest in the suit property, or in any construction raised thereon, during the pendency of the suit;

(v) the construction, if undertaken, shall remain subject to the final outcome of the suit and shall not be relied upon by the petitioners to seek any advantage on the ground of change in the nature or character of the property or on the basis of expenditure incurred thereon; and

(vi) save to the extent modified hereinabove, the parties shall continue to remain bound by the impugned order.

26. It is made clear that the observations made in this order are confined to the adjudication of the present petition and the interim arrangement between the parties. Nothing stated herein shall be construed as an expression of opinion on the title, possession, tenancy rights or any other substantive issue arising in the suit. The trial Court shall decide all such issues independently, on the basis of the pleadings and evidence before it, uninfluenced by any observation made herein.
27. Having regard to the nature of the controversy and the fact that the dispute concerns immovable property over which construction is proposed, the trial Court shall endeavour to proceed with the suit expeditiously and avoid unnecessary adjournments to either side.
28. The petition, along with all connected application(s), stands ***disposed of*** in the above terms.

(Sanjay Parihar)
Judge

JAMMU
05.08.2026
Sneha

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