

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

Case:- CR No.35/2024

Bodh Raj & Ors.

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

Through: Mr. Rakesh Chargotra, Sr. Advocate with
Mr. Abhishek Verma, Advocate

Vs

Raghunath Singh & Ors.

.....Respondent(s)

Through: None.

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

ORDER
(08.04.2026)

1. The two respondents herein, as being the legal heirs of late Bari Ram, have commenced a civil suit instituted on **05.02.2021** before the court of **2nd Additional Munsiff, Jammu** wherein a decree of permanent prohibitory injunction has been sought for restraining the petitioners herein from interfering in the peaceful possession with respect to land measuring **5 kanal and 16 marlas** in khasra **No. 230 min** and **230 min (old)** situated at village Gurha Singhu, tehsil and district Jammu and have also sought a further injunction for restraining the petitioners from forcibly encroaching upon or taking forcible possession of land from the respondents.

2. The petitioners, upon being served, came forward with the written statement on **17.07.2021**.

3. The petitioners, after having filed their written statement, came forward with an application under *Order 7 Rule 11* of the Code

of Civil Procedure, 1908 filed in August 2023 thereby seeking rejection of the plaint by asserting that from the reading of the averments in the plaint, the suit is barred by law and by reference to word 'law', the petitioners meant to the judgments of the Hon'ble Supreme Court of India as well.

4. Said application of the petitioners came to suffer dismissal by virtue of order dated **09.05.2024** against which the petitioners came forward with the present revision petition under section 115 of the Code of Civil Procedure, 1908.

5. The court below by focusing its attention on the nature of the suit that at the end of the day the respondents are asking for a decree of permanent prohibitory injunction in the context of their purported possession over the suit property, cannot be non-suited by the plea being made by the petitioners to hit the maintainability of the suit of the respondents.

6. When this Court examines the written statement filed by the petitioners, this Court comes across preliminary objections raised meaning thereby there is a scope for framing of issue of law with respect to maintainability of the suit and for that purpose a civil court is well within its jurisdiction to travel beyond the plaint averments and also examine the averments made in the written statement and then to take a call with respect to adjudication of issue of law with respect to maintainability of the suit in the facts and circumstances of the case as pleaded from both sides through their respective pleadings.

7. As such, this Court finds that the petitioners' cause would be better served by getting the issues framed in the suit and in the

event of preliminary issue being framed as issue of law then to insist for the indulgence of the trial court for adjudication of the said issues.

8. As such, the present petition is found to be misconceived and ***dismissed*** without prejudice to the standpoint of the petitioners in their written statement vis-à-vis the suit of the respondents.

9. The framing of the issues in the case be undertaken by the trial court without wasting time as the institution of suit is of 2021 and for framing of issue, the trial court is not supposed to bank upon the assistance of the counsel for the petitioners as well as respondents as the responsibility and onus for doing the needful under Order 14 of CPC is exclusively unto trial court.

10. A copy of this order be sent to the court of 2nd Additional Munsiff, Jammu for notice and for being taken on record.



सत्यमेव जयते

(RAHUL BHARTI)
JUDGE

JAMMU
08.04.2026
Sneha