

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM(M) No. 229/2025

Reserved on: 29.07.2026

Pronounced on: 07.08.2026

Uploaded on: 10.08.2026

*Whether the operative part or full
judgment is pronounced: **Full***

1. Som Nath age 62 years
S/o Late Prema alias Prem Chand
R/O Khiddian, Tehsil Bari
Brahmana, District Samba
2. Madan Lal, Age 52 years
S/o Late Prema alias Prem Chand
R/O Khiddian,
Tehsil Brahmana, District Samba

.... Petitioner/Appellant(s)

Mr. Mohd. Latif Malik, Advocate.

V/s

1. Jagdish Kumar S/o Dhuni Chand
R/O Khiddian, Tehsil Bari Brahmana,
District Samba
2. Darshan Lal S/o Dhuni Chand
R/O Khiddian, Tehsil BariBrahmana
District Samba
3. Pardeep Kumar S/o Jagdish Kumar
Tehsil Bari Brahmana, District Samba
4. Lalit Thappa S/o Darshal Lal
Tehsil Bari Brahmana, District Samba
5. Parveen Thappa S/O Darshan Lal
R/O Khiddian, Tehsil BariBrahmana
District Samba
6. Bodh Raj S/o Prema alias Prem Chand
R/O Khiddian, Tehsil Bari Brahmana,
District Samba
7. Mohan Lal S/O S/o Prema
alias Prem Chand
R/O Khiddian, Tehsil Bari Brahmana,

.....Respondent(s)

Through:- Mr. Mohinder Singh, Advocate
Mr. Moti Sharma, Advocate.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
JUDGMENT

Prayer:-

1. Through the medium of the instant petition filed under Article 227 of the Constitution of India, the petitioner seeks setting aside of the order dated 14.07.2025 passed by the Court of learned Additional Special Mobile Magistrate (Munsiff), Samba.

2. The facts, as projected in the petition, are that the petitioners instituted a suit for permanent prohibitory injunction before the learned trial Court seeking a decree restraining the respondents from interfering in any manner with the land measuring 12 kanals falling under Khasra No. 412 min situated at Village Badhori, Tehsil Bari Brahmana, District Samba, from blocking the pathway allegedly being used by the petitioners and proforma respondents, from raising any construction thereon, or from forcibly occupying or dispossessing them from the said land. A further relief was also sought restraining the respondents from causing any obstruction or interruption in the petitioners' free use and occupation of the suit land. Alongside the suit, the petitioners filed an application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure seeking grant of temporary injunction.

3. It is averred that the learned Additional Special Mobile Magistrate (Munsiff), Samba, upon consideration of the application for ad interim injunction, vide order dated 27.03.2025, directed the parties to maintain *status quo* with respect to the suit land measuring 12 kanals falling under Khasra No. 412 min situated at Village Badhori, Tehsil Bari Brahmana, District Samba. Thereafter, the respondents entered appearance and filed their written

statement contesting the claim of the petitioners, *inter alia*, asserting that the petitioners were neither owners nor in possession of the land claimed by them and that the respondents were in possession of land falling under Khasra No. 412 min measuring 02 kanals 10 marlas and Khasra No. 432 min measuring 10 kanals 9 marlas, over which they had established an orchard and were developing a fish pond under Government subsidy schemes.

4. The grievance of the petitioners arises from the subsequent order dated 14.07.2025 passed by the learned trial Court whereby the earlier order dated 27.03.2025 was clarified to the effect that the direction to maintain *status quo* pertained only to the land claimed by the petitioners falling under Khasra No. 412 min measuring 12 kanals and did not extend to the land claimed by the respondents falling under Khasra No. 412 min measuring 02 kanals 10 marlas and Khasra No. 432 min measuring 10 kanals 9 marlas. According to the petitioners, the aforesaid clarification was issued by the learned trial Court suo motu without any application having been moved by either party, without affording an opportunity of hearing, and without recording any reasons. It is, thus, contended that the impugned order is arbitrary, contrary to the settled principles governing grant of temporary injunction, beyond the jurisdiction of the trial Court and, therefore, liable to be set aside in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

5. The respondents have filed their objections resisting the petition. At the outset, it is contended that the petitioners are neither owners nor in lawful possession of the suit land and that the land claimed by them is, in fact, State land, with the revenue record merely reflecting the name of their predecessor in the cultivation column. It is further averred that the respondents are in

lawful possession of land measuring 2 kanals 10 marlas falling under Khasra No. 412 min and land measuring 10 kanals 9 marlas falling under Khasra No. 432 min situated at Village Badhori, Tehsil Bari Brahmana, District Samba, where they have established an orchard and undertaken development of a fish pond and Bio-Floc unit under Government subsidy schemes after investing substantial amounts. According to the respondents, the petitioners have instituted the present proceedings only to obstruct such lawful development.

6. It is further pleaded that the petitioners have been repeatedly instituting frivolous litigation concerning the same subject matter. In this regard, reference has been made to an earlier suit instituted by the petitioners' predecessor-in-interest, which, according to the respondents, remained unattended after his demise and ultimately came to be dismissed in default. It is also their specific stand that no pathway, as alleged by the petitioners, exists over the respondents' land and that the plea regarding obstruction of the pathway has been introduced only to create a cause of action against the respondents.

7. The respondents further contend that the impugned order dated 14.07.2025 is a lawful and reasoned order passed after filing of the written statement and hearing the parties. According to them, the learned trial Court merely clarified that the earlier order of *status quo* dated 27.03.2025 was confined to the land claimed by the petitioners and did not extend to the respondents' independent land, thereby enabling them to continue lawful activities thereon. It is thus urged that the impugned order neither suffers from any jurisdictional error nor from any perversity warranting interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The respondents have, accordingly, prayed for dismissal of the petition.

Legal Analysis:-

8. Heard learned counsel for the parties and perused the record.
9. The scope of interference by this Court while exercising jurisdiction under Article 227 of the Constitution of India is well settled. The supervisory jurisdiction vested in this Court is neither appellate nor intended to correct every error committed by the subordinate Courts. Interference is warranted only where the order impugned is shown to suffer from patent perversity, manifest illegality, jurisdictional error or has resulted in grave miscarriage of justice. Thus, unless the order under challenge is demonstrated to have occasioned failure of justice or caused manifest prejudice to the party assailing it, this Court would be slow in exercising its supervisory jurisdiction.
10. The Hon'ble Supreme Court, in a catena of judgments, has consistently held that the jurisdiction of the High Court under Article 227 of the Constitution of India is supervisory and not appellate. In **'Garment Craft v. Prakash Chand Goel'**, (2022) 4 SCC 181, after noticing the earlier decision in **'Estralla Rubber v. Dass Estate (P) Ltd.'**, (2001) 8 SCC 97, the Hon'ble Supreme Court reiterated that the High Court, while exercising its supervisory jurisdiction under Article 227, cannot assume the role of an appellate Court or correct mere errors of fact or law. Similar principles have been reiterated in **'Shalini Shyam Shetty v. Rajendra Shankar Patil'**, (2010) 8 SCC 329, wherein it has been held that the power under Article 227 is to be exercised most sparingly and only to keep the subordinate Courts within the bounds of their authority and not to interfere merely because another view on facts or

law is possible. The relevant observations made by the Hon'ble Supreme Court in *Garment Craft* (supra) are reproduced as under:

“...The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under [Article 227](#) is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice...”

11. In the light of the aforesaid exposition of law, the question that falls for consideration is whether the impugned order dated 14.07.2025 can be said to suffer from such patent perversity, jurisdictional error or manifest illegality as would justify interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The answer to the said question has to be gathered from the nature of the impugned order, the stage at which it came to be passed and its effect on the rights of the parties.

12. The Hon'ble Supreme Court in “**Dalpat Kumar v. Prahlad Singh**”, (1992) 1 SCC 719, while explaining the scope and object of granting temporary injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure and the principles governing the exercise of such discretionary jurisdiction, has held as under:

“5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

13. In the light of the aforesaid principles governing the grant of temporary injunction, it is evident that the order dated 27.03.2025 was passed only as an *ad interim* measure before the respondents had entered appearance. The said order itself was expressly made subject to the objections of the defendants and

reserved liberty in their favour to seek alteration or modification thereof. Upon the respondents entering appearance and filing their written statement and objections, placing their defence and the material relied upon by them before the learned trial Court, it was well within the jurisdiction of the learned trial Court to examine the subsequent pleadings while regulating the interim arrangement operating between the parties. The clarification contained in the impugned order is, therefore, required to be viewed in the context of the subsequent pleadings that came on record and not in isolation.

14. A perusal of the record reveals that the order dated 27.03.2025 directing the parties to maintain status quo was admittedly an *ad interim* arrangement passed at the threshold of the proceedings while considering the application under Order XXXIX Rule 1 and 2 Code of Civil Procedure. The said order itself specifically recorded that it was subject to the objections of the defendants and further reserved liberty in favour of the defendants to seek alteration or modification thereof. Evidently, the interim arrangement had not attained finality and the proceedings on the application under Order XXXIX Rule 1 and 2 Code of Civil Procedure remained open for consideration upon the appearance of the defendants and filing of their response. Merely because an *ad interim* order had been passed, it cannot be said that the learned trial Court became *functus officio* or was divested of its jurisdiction to examine the matter further in the light of the subsequent pleadings.

15. The record further reveals that pursuant to the appearance of the respondents, a detailed written statement as well as objections to the application under Order XXXIX Rule 1 and 2 Code of Civil Procedure came to be filed. The respondents specifically disputed the petitioners' possession over the suit

land, asserted their independent possession over separate parcels of land, referred to the earlier litigation between the parties and pleaded that substantial developmental activities had already been undertaken by them under Government subsidy schemes. It is also borne out from the impugned order itself that the learned trial Court recorded the presence of learned counsel for both the parties and heard their submissions before proceeding to pass the order dated 14.07.2025. Thus, the contention advanced by the petitioners that the impugned order came to be passed without affording them an opportunity of hearing is belied by the record itself. It was thereafter, upon consideration of the rival pleadings and submissions, that the learned trial Court clarified the scope of the *ad interim* arrangement already operating between the parties.

16. It also merits notice that the proceedings before the learned trial Court arose out of an application under Order XXXIX Rule 1 and 2 Code of Civil Procedure, wherein the Court was required to examine, albeit prima facie, the existence of a prima facie case, balance of convenience and irreparable injury before regulating the interim rights of the parties. The order dated 27.03.2025 was admittedly passed at the ad interim stage before the respondents had entered appearance. Upon the respondents filing their written statement and objections, placing their defence and the material relied upon by them before the Court, it was well within the jurisdiction of the learned trial Court to consider the subsequent pleadings while regulating the interim arrangement operating between the parties. The clarification contained in the impugned order is, therefore, required to be viewed in the context of the subsequent pleadings that came on record and not in isolation.

17. Equally devoid of merit is the contention of the petitioners that the impugned order came to be passed without affording them an opportunity of hearing. A plain reading of the impugned order itself reveals that it records the presence of learned counsel for both the parties and specifically notes that arguments were heard before the order came to be passed. The clarification was issued only after the respondents had entered appearance, filed their written statement as well as objections to the application under Order XXXIX Rule 1 and 2 Code of Civil Procedure, and after the learned trial Court had considered the rival pleadings and submissions of the parties. In such circumstances, it cannot be said that the impugned order was passed behind the back of the petitioners or in violation of the principles of natural justice, as sought to be projected in the present petition.

18. At this stage, it would also be apposite to notice that the learned trial Court continued to remain seized of the proceedings arising out of the application under Order XXXIX Rule 1 and 2 Code of Civil Procedure. The passing of an ad interim arrangement at the initial stage did not bring the proceedings on the application for temporary injunction to an end, particularly when the order dated 27.03.2025 itself made the arrangement subject to objections and expressly reserved liberty to the defendants to seek its alteration or modification. The jurisdiction of the learned trial Court to regulate such interlocutory proceedings, upon the appearance of the defendants and consideration of the pleadings and material subsequently brought on record, cannot, therefore, be said to have ceased merely by reason of the earlier ad interim order. The inherent powers preserved under Section 151 of the Code of Civil Procedure are, in this context, supplementary in nature and may be

invoked to advance the ends of justice or prevent abuse of the process of the Court, so long as their exercise is not in conflict with any express provision of the Code or the legislative intent. The Hon'ble Supreme Court in '**Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal**', AIR 1962 SC 527, while explaining the limitations governing the exercise of such inherent powers, has held as under:

'21...these observations clearly mean that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the code or against the intentions of the legislature. This restriction, for practical purposes, on the exercise of those powers is not because those powers are controlled by the provisions of the Code but because it should be presumed that the procedure specifically provided by the legislature for orders in certain circumstances is dictated by the interests of justice'.

19. Applying the aforesaid principle to the facts of the present case, this Court finds no substance in the contention that the learned trial Court stood divested of jurisdiction to deal with the interim arrangement after passing the order dated 27.03.2025. The proceedings under Order XXXIX Rule 1 and 2 Code of Civil Procedure were still pending; the respondents had entered appearance and placed their defence on record; and the order dated 27.03.2025 itself contemplated consideration of objections and permitted alteration or modification thereof. The subsequent

consideration of the rival pleadings, therefore, cannot, by itself, be characterised as an assumption of jurisdiction not vested in the learned trial Court, particularly when the parties were heard before the impugned order was passed.

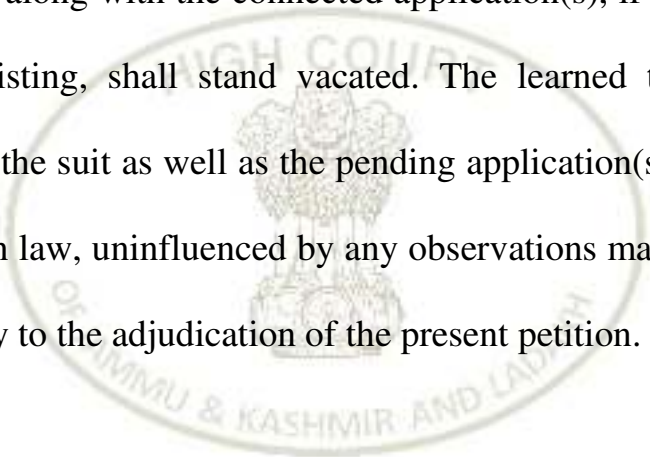
20. Equally significant is the fact that the petitioners have failed to demonstrate as to how the clarification embodied in the impugned order has occasioned any prejudice or resulted in failure of justice. The interim protection granted vide order dated 27.03.2025 in respect of the land claimed by the petitioners has neither been recalled nor vacated and continues to regulate the rights of the parties during the pendency of the suit. The clarification issued by the learned trial Court neither determines the substantive rights of the parties nor finally adjudicates the issues arising in the suit. It merely delineates the extent of operation of the ad interim arrangement pending consideration of the application under Order XXXIX Rule 1 and 2 Code of Civil Procedure. In the absence of any demonstrable prejudice, failure of justice or jurisdictional infirmity, this Court is unable to hold that the impugned order suffers from such patent perversity, manifest illegality or jurisdictional error as would justify interference in exercise of the limited supervisory jurisdiction under Article 227 of the Constitution of India.

21. The rival claims with regard to title, possession, identity and extent of the land constitute disputed questions of fact, which necessarily require adjudication on the basis of evidence before the learned trial Court. This Court, while exercising supervisory jurisdiction under Article 227 of the Constitution of India, cannot undertake such an enquiry or assume the role of an appellate

Court by recording findings on disputed factual issues at the interlocutory stage. Suffice it to observe that the clarification issued by the learned trial Court does not determine the rights of the parties finally and all observations made therein are only *prima facie* in nature for the purposes of regulating the interim arrangement. The rights and contentions of the parties shall necessarily abide by the final adjudication of the suit on the basis of the evidence led before the learned trial Court.

Conclusion:-

22. For the foregoing reasons, finding no merit in the present petition, the same is dismissed along with the connected application(s), if any. The interim direction, if subsisting, shall stand vacated. The learned trial Court shall proceed to decide the suit as well as the pending application(s), if any, strictly in accordance with law, uninfluenced by any observations made herein, which are confined solely to the adjudication of the present petition.



(Wasim Sadiq Nargal)
Judge

Jammu:
07.08.2026
Nikhil

<i>Whether Judgment is Speaking?</i>	<i>Yes/No</i>
<i>Whether Judgment is Reportable?</i>	<i>Yes/No</i>