

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

CM(M) No. 124/2022

Raj Kumari and others
(LRs of Late Shastri Ram)

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

Through: Mr. Ajay Vaid, Adv.

vs

Parkasho Devi and others
(LRs of Late Ghar Singh)

..... Respondent(s)

Through: Mr. Pawan Kumari Maini, Adv.

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

ORDER
07.09.2026

1. The petitioner, through the medium of present petition, has challenged order dated 02.12.2021 passed by 1st Additional District Judge, Jammu (hereinafter to be referred as the trial court), whereby the application of the predecessor-in-interest of the petitioners seeking implementation of order dated 02.12.2013 passed by the said court through the agency of Police, has been dismissed.
2. Heard learned counsel for the parties and perused the record.
3. It appears that the predecessor-in-interest of the petitioners filed a suit for specific performance of agreement to sell dated 29.01.2003 and 11.09.2003 against the predecessor-in-interest of the respondents before the court of learned trial court. In the said suit, the predecessor-in-interest of the plaintiffs/petitioners pleaded that the predecessor-in-interest of the respondents/defendants had agreed to sell land measuring 8 kanals 3 marlas

falling under khasra Nos. 4517/1205, 871, 1205/4518 situated at Arnia for a total sale consideration of ₹1.44 lacs. Another agreement to sell dated 11.09.2003 came to be executed by the parties, whereby the predecessor-in-interest of the respondents/defendants agreed to sell another patch of land measuring 7 kanals 18 marlas falling under khasra Nos. 1597, 1600 min and 1600 for a total sale consideration of ₹1.20 lacs.

4. According to the predecessor-in-interest of the plaintiffs/petitioners, after receipt of the sale consideration, the plaintiff was put in possession of the suit land and he continues to cultivate the land since the year 2003. It was also pleaded that the defendant executed a power of attorney dated 11.09.2003 with regard to the suit land in favour of the predecessor-in-interest of the plaintiffs. On the basis of said power of attorney, plaintiff executed a sale deed on 10.04.2007 and sold 4 kanals of land under khasra No. 1600 min in favour of his son-Surinder Kumar. The revenue record in respect of the suit land was also corrected and the plaintiff was shown to be in possession of the suit land. It was pleaded that the defendant challenged the sale deed dated 10.04.2007 executed by him in favour of the son of the plaintiff and he has also filed an appeal before the Settlement Officer against order dated 04.06.2012, whereby the Tehsildar Bishnah has corrected the revenue entries.
5. The plaintiff further pleaded that the defendant by filing the appeal against order of Tehsildar Bishnah and by challenging the sale deed dated 10.04.2007 has indirectly refused to execute sale deed in respect of the remaining land, as a result whereof, he was compelled to file the suit before

the learned trial court. Along with the suit, the plaintiff also filed an application under Order XXXIX Rules 1 and 2 of the CPC.

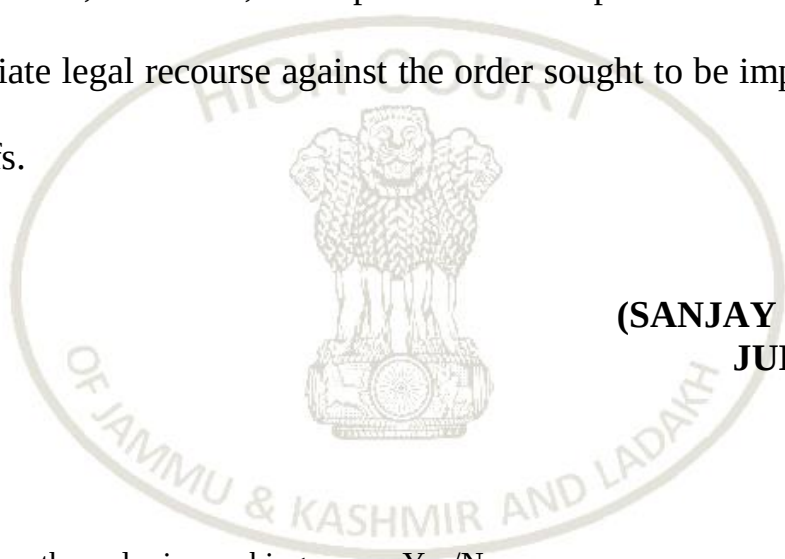
6. Learned trial court vide order dated 02.12.2013 passed an *ex parte* interim order directing the defendant not to cause interference into the possession of the plaintiff over the suit land.
7. The defendant filed his written statement in which besides raising preliminary objections with regard to the maintainability of the suit, it was contended that the alleged agreements to sell are unenforceable documents. It was further contended by the defendant that the agreements to sell are hit by provisions of Section 54 of the Transfer of Property Act and without registration, these documents cannot be considered. It was also pleaded that the plaintiff is out of the possession and the suit land is in possession of the defendant. It was contended that the suit land is joint and undivided ancestral property of the defendant and his sister and without impleadment of all necessary parties, the issues arising in the suit cannot be adjudicated upon.
8. It seems that after the filing of the written statement by the defendant, the learned trial court heard the arguments of the parties and vide order dated 17.11.2016 *ex parte* interim order dated 02.12.2013 has been made absolute. However, the order, it seems is not reasoned. Nonetheless, the order is still in force.
9. It seems that during the pendency of the suit, the plaintiff/the predecessor-in-interest of the petitioners made repeated applications before the learned trial court seeking implementation of order dated 02.12.2013 as confirmed vide order dated 17.11.2016. The last of such applications was made by the

plaintiff on 22.10.2018. However, learned trial court by virtue of impugned order dated 02.12.2021 has declined to get order dated 02.12.2013 implemented through Police agency. While passing the said order, the learned trial court has observed that no entry in the khasra girdhawari could have been recorded in favour of the plaintiff on the basis of power of attorney or on the basis of agreement to sell. It has also been observed by the learned trial court that possession of the plaintiff has been shown in his capacity as an attorney of the defendant as such, it is to be deemed that it is the defendant, who is in possession of the property. It has also been observed that the power of attorney executed by the defendant in favour of the plaintiff was cancelled in the year 2005. On this basis, it has been concluded that order dated 02.12.2013 cannot be implemented.

10. A perusal of impugned order dated 02.12.2021 passed by the learned trial court would clearly reveal that the same, in effect, amounts to vacation of order dated 02.12.2013. The same could not have been done by the learned trial court, as order dated 02.12.2013 was confirmed and made absolute by the said court on 17.11.2016. Unless and until, order dated 02.12.2013 passed by the learned trial court as confirmed vide order dated 17.11.2016 by the said court is set aside by a superior court or is varied by the said court in exercise of its powers under Order XXXIX Rule 4 CPC, the same could not have been nullified by the learned trial court in ancillary proceedings seeking implementation of the said order. As long as order dated 02.12.2013 as confirmed by order dated 17.11.2016 is in force, it is duty of the trial court to get it implemented, when its violation is brought to its notice. The trial court

could not have gone behind the order sought to be implemented and raised questions about the factum of possession with regard to the suit land. The impugned order is clearly a classic example of illegal exercise of jurisdiction by the trial court and, as such, the same is not sustainable in law.

11. For the foregoing reasons, the petition is allowed and impugned order dated 02.12.2021 is quashed. Learned trial court is directed to deal with the application of the petitioners/plaintiffs seeking implementation of order dated 02.12.2013 as confirmed by order dated 17.11.2016 in accordance with law. It shall, however, be open to the respondents/defendants to take appropriate legal recourse against the order sought to be implemented by the plaintiffs.



(SANJAY DHAR)
JUDGE

Jammu
07.09.2026
Rakesh PS

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