

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

MA No. 53/2025
CM No. 6029/2025
Cav No. 2156/2025

Date of pronouncement: 12.08.2026
Date of uploading: 12.08.2026

Rajesh Khajuria & Ors.

.....Appellants

Through :- Mr. Ranjeev Dubey, Advocate

v/s

Arun Khajuria & Ors.

.....Respondents

Through :- Mr. Vishal Goel, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE
JUDGEMENT (ORAL)
12.08.2026

1. This petition is taken up for disposal at the admission stage.
2. Heard learned counsel for both sides and gone through the documents placed on record.
3. The appellants herein are the plaintiffs before the Court of learned Principal District Judge, Udhampur. They instituted a civil suit seeking a declaration that the plaintiffs, along with pro forma defendant Ajay Kumar Khajuria and contesting defendant Arun Khajuria, are owners in joint possession of land measuring 3 marlas (approximately 700 square feet), being Abadi Deh land situated at Ward No. 3, Ramnagar Chowk, Tehsil and District Udhampur. It is pleaded that the parties inherited the said property

from their predecessor-in-interest, late Isher Dass. The plaintiffs have also sought partition of the property by metes and bounds in accordance with their respective shares in the existing structure, besides a decree of permanent prohibitory injunction restraining the contesting defendant from changing the nature and character of the building existing over the suit land.

4. By virtue of the order impugned dated 11.09.2025, the learned trial Court declined to grant the interim relief prayed for by the plaintiffs/appellants, holding that they had failed to establish a prima facie case. Upon consideration of the pleadings and material placed before it, the trial Court observed that the defendants appeared to be in exclusive possession of the suit property and had already raised construction of the ground floor during the year 2024. The trial Court further noticed that no objection had been raised by the plaintiffs at the time such construction was undertaken and, therefore, their plea of joint possession did not, prima facie, find support from the material on record.

5. While declining the interim relief, the learned trial Court nevertheless sought to safeguard the interest of the plaintiffs by directing that the construction raised by the defendants would remain subject to the final outcome of the suit. It was further provided, in the alternative, that the defendants would compensate the plaintiffs/appellants monetarily to the extent of their share, calculated on the prevailing market value. The defendants were also directed to furnish an undertaking before the Court to that effect.

Aggrieved of the said order, the appellants have preferred the present appeal, principally contending that the suit property originally belonged to their father, late Isher Dass, and, therefore, devolved upon his legal heirs in accordance with law.

6. The defendants, on the other hand, placed reliance upon a family settlement dated 20.05.2024, stated to have been executed between the mother of the parties, namely Shakuntla Devi, and defendant Arun Khajuria. The appellants submit that the said settlement is already under challenge in a separate suit and that the Court seized of those proceedings has stayed its operation. It is, therefore, contended that the learned trial Court, despite the subsistence of the said interim order, failed to adequately protect the interest of the appellants by restraining the respondents from changing the nature and character of the suit property or from creating any third-party interest therein on the strength of the impugned settlement.

7. Learned counsel appearing for the respondents has vehemently opposed the appeal and submitted that the appellants/plaintiffs have failed to establish any prima facie case warranting interference. It is contended that the learned trial Court has appropriately balanced the competing equities and protected the interests of both sides while passing the order impugned.

8. The controversy between the parties pertains to land measuring 3 marlas, admittedly falling within the category of Abadi Deh. According to the appellants, the property belonged to their

father, late Isher Dass, and, upon his demise, devolved upon his legal heirs in equal shares. The respondents, however, assert that the property exclusively belonged to the mother of the parties, Shakuntla Devi, who remained in exclusive possession thereof and had, as far back as in the year 1971, let out a portion thereof. It is further their case that, pursuant to the family settlement dated 20.05.2024, Shakuntla Devi parted with possession in favour of respondent Arun Khajuria. According to the respondents, the mere fact that the family settlement is under challenge in separate proceedings would not, by itself, dislodge their claim of exclusive possession over the suit property.

9. During the course of hearing, learned counsel for the appellants further submitted that an application had been moved before the learned trial Court under Order I Rule 8 of the Code of Civil Procedure, inter alia, asserting that Shakuntla Devi could not have created an exclusive interest in favour of respondent Arun Khajuria by taking recourse to the aforesaid settlement. The contention essentially is that Shakuntla Devi herself did not possess any exclusive right, title or interest in the suit property capable of being transferred exclusively in favour of one of the parties.

10. Having considered the rival submissions and regard being had to the nature of the controversy, it is evident that the matter involves seriously disputed questions of fact and title which can appropriately be determined only upon the parties leading evidence before the learned trial Court. At the interlocutory stage,

therefore, the endeavour of the Court ought to be to preserve the subject matter of the suit and protect the competing interests of the parties so that the ultimate decree, if any, is not rendered ineffectual. This assumes significance particularly when the appellants dispute the claim of exclusive possession set up by the respondents and assert their status as co-sharers in property allegedly inherited from their father, late Isher Dass.

11. The pedigree table placed on record indicates that late Isher Dass was survived by his wife, Shakuntla Devi, and four sons. The other sons dispute the claim that Shakuntla Devi held the suit property in her exclusive right and possession and, consequently, also question her competence to confer exclusive rights or possession upon respondent Arun Khajuria. The rival claims in this regard necessarily require adjudication on the basis of evidence and cannot appropriately be conclusively determined at the stage of consideration of an application for interim relief.

12. It is a settled principle governing joint property that, ordinarily, possession of one co-sharer is treated as possession on behalf of all the co-sharers unless ouster or exclusion is specifically pleaded and established in accordance with law. The mere exclusive use or occupation of a particular portion by one co-sharer would not, by itself, necessarily extinguish the rights of the other co-sharers. The suit land is admittedly described as Abadi Deh. Such land ordinarily constitutes the inhabited village site used for residential and allied purposes by the inhabitants of the village,

including land underneath residential houses and appurtenant areas. In the present case, it is not the case of either side that late Isher Dass was not an inhabitant of the village.

13. Whether the suit property belonged exclusively to Shakuntla Devi or constituted property inherited from late Isher Dass is, therefore, a substantial issue requiring adjudication by the learned trial Court. Any determination on that issue would necessarily have a direct bearing upon the nature and extent of the rights claimed by the respective parties. At this interlocutory stage, it would neither be appropriate nor permissible to record any conclusive finding on the question of title.

14. Another significant circumstance which cannot be overlooked is that the respondents claim rights on the basis of the family settlement dated 20.05.2024. Admittedly, the said settlement is already the subject matter of challenge in separate proceedings pending before the competent Court, wherein its operation has been stayed by an interim order. Once the operation of the document forming the basis of the respondents' asserted rights has been stayed, any benefit or interest claimed by them on the strength thereof must necessarily remain subject to the final outcome of those proceedings. Consequently, any construction raised or other acts undertaken by the respondents on the basis of the interest allegedly flowing from the settlement dated 20.05.2024 would likewise remain subject to the adjudication of the rights of the parties in the pending proceedings.

15. In the aforesaid circumstances, the learned trial Court cannot be faulted insofar as it has permitted the existing possession of the respondents to continue while making the construction raised by them subject to the final outcome of the suit. Such an arrangement, at the interlocutory stage, substantially balances the equities between the parties. However, the apprehension expressed by the appellants that the respondents may, during the pendency of the suit, create third-party rights or interests in the suit property cannot altogether be brushed aside. Creation of such third-party rights may not only complicate the pending litigation but may also prejudice the rights of the parties and impede effective execution of the decree that may ultimately be passed.

16. Accordingly, in order to preserve the subject matter of the litigation and to ensure that neither party derives an undue advantage during the pendency of the proceedings, the present appeal is disposed of by supplementing the directions contained in the order dated 11.09.2025 passed by the learned trial Court. The respondents/defendants shall not create any third-party right, title or interest in the suit property, whether by way of sale, gift, mortgage, permanent lease, transfer, alienation or otherwise, during the pendency of the suit. They shall, however, be at liberty to use and enjoy the property and may let out the same on a yearly basis, subject to the condition that any rent, profit or income derived therefrom shall remain subject to the final outcome of the suit and the determination of the respective rights and shares of the parties.

17. It is made clear that the observations made hereinabove are confined to the adjudication of the present appeal arising out of an interlocutory order and shall not be construed as an expression of opinion on the merits of the rival claims. The learned trial Court shall decide the suit independently, on the basis of the pleadings, evidence and applicable law, uninfluenced by any observation made in this order.

18. The appeal stands **disposed of** in the above terms. All pending application(s), if any, shall also stand disposed of.

(Sanjay Parihar)
Judge

JAMMU
12.08.2026
Sneha

Whether the judgment is speaking: **Yes**
Whether the judgment is reportable: **No**

