

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
CM(M) 26/2026 CM(275/2026)**

Shameema and Another

...Petitioner(s)

Through: Ms. Muzamil Jabeen, Advocate vice
Mr. Manzoor A. Dar, Advocate

Nasreena and Ors.

...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

06.02.2026

1. A year 2012 instituted civil suit for declaration with consequential relief of permanent prohibitory injunction wherein the petitioners, as plaintiffs, are seeking declaration of their ownership in possession of suit land measuring 2 kanal and 14 marlas in Survey No. 219 min Mouza Brane, Tehsil and District Srinagar, is still in a state of adjudication wherein even the evidence of the plaintiffs has not been completed, which reflects a sorry state of affairs in which adjudication of a civil suit is taking place before the Court of 2nd Additional District Judge, Srinagar.

2. In connection with disposal of a temporary injunction application, the Court of 2nd Additional

District Judge, Srinagar had gone for appointment of a Commissioner for demarcation of the suit land and, for that purpose, the Tehsildar concerned was appointed as a Court Commissioner.

3. The appointment of Court Commissioner had taken place in terms of an order dated 21.12.2013.

4. Said order dated 21.12.2013 *per se* does not reflect whether the appointment of the Commissioner was under Order XXXIX Rule 7 of the Code of Civil Procedure or Order XXVI, as both operate in a different legal contexts.

5. Tehsildar concerned, as Commissioner, came forward with submission of his commission report vide No. 854/NTH/14 dated 29.03.2014.

6. The Commission was carried out by Tehsildar concerned by constituting a committee of demarcation of six revenue subordinate officials headed by Naib Tehsildar, North Circle Harwan, Srinagar.

7. It occurred to the petitioners as plaintiffs to seek examination as witness of the Commissioner-Tehsildar and also the demarcation carrying out team of revenue officials, for which purpose an application came to be submitted for summoning them as witnesses.

8. Said application of the petitioners has come to suffer rejection by way of an order dated 16.10.2025 on the reasoning as given in the order.

9. The Trial Court of learned 2nd Additional District Judge, Srinagar referred to the fact that application for said purpose has been filed on 01.12.2021 while the framing of issues in the case had taken place on 10.06.2016, before which date the demarcation report had already come to be filed on 03.04.2014.

10. The petitioners, as plaintiffs, are not disputing the demarcation report *per se* but nevertheless intend to examine the demarcation carrying out team as witnesses.

11. Leading evidence by way of examination of witnesses in a civil suit is not a matter of plaything that plaintiff or for that matter the defendant is/are entitled to indulge in a meaningless exercise just for fishing sake, as in the present case, having no issue with the demarcation report, the petitioners, as plaintiffs are still intending to examine the officials of the demarcation team.

12. Ms. Muzamil Jabeen, learned Advocate submits that Order XXVI Rule 10(2) of the Civil Procedure Code

is an enabling provision for summoning the makers of the demarcation report.

13. Order XXVI Rule 10 of the Code of Civil Procedure reads as under:-

“(1) Procedure of Commissioner:- The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and deposition to be evidence in suit:- The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Commissioner may be examined in person:- Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.”

14. There is a clear cut distinction envisaged by the framers of the Code of Civil Procedure. The scope for examining Commissioner as a witness in the case is not self given to a party rather it is reserved for the

Court to permit any of the parties to the suit to first seek permission for examining a Commissioner in the Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

15. Thus, the permission *per se* is not meant for the sake of proving the Commissioner's report as an evidence because that comes by the very reference that Commissioner's report is one of the pieces of evidence on a judicial file.

16. In the present case, the petitioners, as plaintiffs have no issue with the demarcation report, and thus, for what purpose they intend to examine the Commissioner and demarcation team officials appears to be nothing but a futile exercise, perhaps under a misconception that without examining the Commissioner, the Commissioner's report may not get exhibited as evidence. Requirement with respect to examination of witness relatable to document, is meant to take place in case where unless the author of a document intended to be brought in as witness, is examined, said document does not come on record as judicial evidence.

17. Therefore, this Court is of the opinion that though the reasoning given by the Court below may not be on the line as referred by this Court but nevertheless the conclusion arrived at by the Court of 2nd Additional District Judge, Srinagar in terms of order dated 16.10.2025 is justifiable and, as such, the present petition is not entertained and is, accordingly, **dismissed.**

18. This Court, in suo motu exercise of its supervisory jurisdiction under Article 227 of the Constitution of India directs the 2nd Additional District Judge, Srinagar to accord hearing to this long pending civil suit on fortnight basis and ensure that the evidence stage of the suit gets concluded within next six months ending 31st August, 2026, with a report to be submitted to the Hon'ble Administrative Judge and thereafter the suit be taken for final adjudication.

19. Registrar Judicial, Srinagar to forward a copy of this order to the Court of 2nd Additional District Judge, Srinagar.

(RAHUL BHARTI)
JUDGE

SRINAGAR:

06.02.2026

"Mir Arif"