

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

RP No.02/2026

HAJI MOHAMMAD ALTAF & ORS.

...PETITIONERS/APPELLANT(S)

Through: - Mr. Zubair Ahmad, Advocate.

Vs.

VAISHALI CHOPRA & ANR.

...RESPONDENT(S)

Through: - Mr. S. M. Ayoub, Advocate.

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

ORDER(ORAL)

12.08.2026

1) The present review petition seeking review of Order dated 03.11.2025 passed by this Court in RFA No.07/2025, has been filed by respondents No.4 to 7 to the appeal.

2) Heard and considered.

3) It appears that a civil suit came to be filed by predecessor-in-interest of the respondents herein, before the court of learned Additional District Judge, Srinagar (hereinafter "the trial court"), seeking a decree of partition in respect of the suit property. Besides this, the plaintiff also sought the decree that sale deed dated 15.02.2007 executed in respect of the suit property in favour of the review petitioners herein, be declared as null and void *ab*

initio, with a permanent prohibitory injunction restraining the defendants from raising any sort of construction on the suit property. A mandatory injunction directing the defendants to demolish the portion of the constructed structure on the suit property, was also sought.

4) On an application filed under Order VII Rule 11 of CPC by the review petitioners herein, who happened to be defendants No.4 to 7 in the suit, the trial court passed order dated 20.12.2024, thereby rejecting the plaint on the ground that the plaint does not disclose cause of action and that jurisdiction of the civil court is barred in view of the provisions contained in the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 (for short “the Migrant Act”).

5) The aforesaid order passed by the learned trial came to be challenged by the respondents herein before this Court by way of appeal bearing RFA No.07 of 2025. Vide the order under review passed on 03.11.2025, this Court allowed the appeal and set aside the order of the trial court. The matter was remanded back to the trial court for fresh consideration on merits.

6) Without going into the question whether the order passed by the trial court is sustainable in law, one thing is

clear that this Court while passing order under review has committed certain factual errors, which are noticed hereinbelow.

7) In para (2) of the order under review, this Court has, while reproducing the relief sought in the suit, in fact, reproduced the relief sought in the appeal. Similarly, in para (11) of the order, it has been mentioned that the order passed under Section 5 of the Migrant Act relates to eviction of unauthorized occupants which are enforceable under Section 7 of the Act. While Section 5 of the Migrant Act deals with eviction of unauthorized occupants, Section 7 of the Act does not deal with enforcement of such orders but it deals with appeals. In the same para, this Court has, while reproducing the provisions of Section 8 of the Migrant Act, reproduced some other provision, which, it appears, does not find mention in the Migrant Act.

8) In view of the foregoing discussion, it is clear that this Court while passing order dated 03.11.2025 has not only noted incorrect facts, but has even noted the incorrect provisions of law, which is an error apparent on the face of record. Therefore, the impugned order deserves to be recalled.

9) Accordingly, the review petition is allowed and impugned order dated 03.11.2025 passed by this Court is

recalled. The appeal is restored to its original position.
Registry is directed to list the appeal for fresh consideration
on **16.09.2025**.

(Sanjay Dhar)
Judge

SRINAGAR

12.08.2026

“Bhat Altaf-Secy”

Whether the **Order** is speaking: **YES**
Whether the **Order** is reportable: **YES/NO**

