

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

CM(M) 121/2024
CM(2222/2024)
CM(2223/2024)
CM(3851/2025)
CM(4950/2025)

- 1. Mohammad Ashraf Shah (Age: 65 years) ...Petitioner(s)**
S/O Late Mohammad Shafi Shah
R/O Chota Bazar, Kani Kadal, Srinagar
At present Hyderpora, Srinagar.
- 2. Mst. Shameema (Age:62 years)**
D/O Late Mohammad Shafi Shah
R/O Chota Bazar, Kani Kadal, Srinagar

Through: Mr. B. A. Bashir, Senior Advocate with
Mr. Azeem Rasic Nabi, Advocate.

Vs

Zahoor Ahmad Shah ...Respondent(s)
S/O Late Mohammad Shafi Shah
R/O Wakeel Colony, Brein Nishat, Srinagar.

Through: Respondent in Person.

CORAM:

Hon'ble Mr. Justice Rajesh Sekhri, Judge.

JUDGMENT

(09.09.2026)

(ORAL)

01. Petitioners have invoked supervisory jurisdiction of this Court, under Article 227 of the Constitution of India for the quashment of order dated 06.03.2024, passed by learned 3rd Additional District Judge, Srinagar ["the Trial Court"], in case titled "Zahoor Ahmad Shah Vs Mohammad Shafi Shah & Ors."

02. Before a closer look at the grounds urged in the memo of petition, some admitted facts of the case are required to be noticed; they are stated thus:

2.1 Respondent instituted a suit in the year 2004, against the petitioners and their deceased father, for the following reliefs:

- A. A decree in the nature of declaration be issued in favour of plaintiff and against defendants declaring the documents (1) Sale Deed (2) Rent Deed (3) Surendar Deed filed as part of pleadings as invalid, and be further declared opposed to rights of plaintiff and public policy, further decree be issued in favour of plaintiff and against defendant declaring the Sale and purchase of land/orchard at Badampora, Kurhama Ganderbal, Srinagar as benami.
- B. A decree for declaration be issued in favour of plaintiff and against defendants declaring him to be entitled to receive his due share out of whole property mentioned in suit in accordance with rights of inheritance and succession.
- C. A decree for prohibitory injunction be issued in favour of plaintiff and against defendants restraining them from causing any interference in the possession and occupation of plaintiff over the orchard mentioned here-to-fore.
- D. Any other decree order or direction though not prayed for yet this Hon'ble court deems just and proper be issued in favour of plaintiff.

2.2 The petitioners filed written statement and learned Trial Court vide order dated 30.12.2011 framed the issues.

2.3 After the demise of the father of the petitioners, in February, 2018, respondent filed an application in the Trial Court for amendment of the suit, which came to be allowed on 16.08.2021. The said order was assailed

by the petitioners by way of a revision petition in this Court, which was dismissed.

2.4 Subsequently, petitioners preferred an application in the Trial Court for rejection of plaint under Order VII Rule 11 CPC and it came to be dismissed by the Trial Court in terms of order dated 13.12.2021.

2.5 The petitioners thereafter filed their written statement to the amended plaint, whereby it was asserted by the petitioners that, since challenge to the surrender deed and lease deed was barred by limitation, the suit in the present form could not be entertained. Relevant part of the written statement for the facility of reference is extracted below:

- (i) As per relief clause, surrender/relinquishment deed executed on 1993 is sought to be declared as nullity by virtue of this suit which has been initially filed in 2004 after ten years when limitation period provided is only three years. How a non-maintainable suit hit by limitation, is being tried on the face of it, is not understandable.
- (ii) Rent deed executed by Masjid Committee with respect to a shop in favour of Defendant No. 2 way back in 1983, is sought to be declared invalid for which suit has been filed in 2004 after twenty years, how the said relief is maintainable, is not understandable.
- (iii) Sale deed description of which is sought to be declared invalid, is not shown in the relief clause, how can such a relief be granted, is not understandable. Yet, the suit is being tried. Rest of the relief being dependent on relief "a", naturally will fall to the ground if relief "a" for one or the reason, cannot be granted.

- (iv) This Court has no territorial as well as pecuniary jurisdiction to entertain the suit. The plaintiff seeks nullification of surrender deed for execution of which, he has received consideration of Rs. 4.50 lacs way back in 1993. Even if same valuation is fixed in the suit, he had to pay proper court fee for that also ad valorem, which he has not paid because when declaratory decree is sought with consequential reliefs, ad valorem court fee has to be paid which he has not done. Hence, suit is not maintainable. Even on this valuation to seek cancellation of surrender deed for which he has received consideration of Rs. 4.50 lacs, pecuniary jurisdiction is lacking this court to try the suit.
- (v) That part of the suit is alleged to be orchard at Sopore for which there is not an iota of details given, yet this court is trying the suit without territorial jurisdiction.
- (vi) That the suit filed in 2004, was not maintainable during the lifetime of Defendant No. 1, which has been admitted in the present amended plaint also, hence, on the basis of a non-maintainable suit under the garb of amendment, same cannot be maintained, therefore, the suit deserves to be dismissed with exemplary costs.”

2.6 On the basis of amended pleadings, learned Trial Court vide order dated 08.07.2023 framed issues in addition to the issues already framed in the unamended pleading, in terms of order dated 30.12.2011

2.7 The petitioners, subsequently invoked Order XIV Rule 5 CPC by filing an application in the Trial Court for recasting the issues and framing of additional issues, which came to be dismissed by the Trial Court, in terms of the impugned order dated 06.03.2024, primarily on the ground that since the suit has suffered a number of

transfer applications, amendments and revision petitions, the long pendency of the suit is to be given due weightage. Learned Trial Court was of the view that issues already framed in terms of orders dated 30.12.2011 and 08.07.2023, are sufficient to determine the controversy between the parties, the issues proposed by the petitioners were not necessary.

03. Petitioners are aggrieved of the impugned order primarily on the ground that since it was their categorical stand in the written statement that surrender/relinquishment deed executed in 1993, and the rent deed in question, those are sought to be annulled by the respondent by virtue of the suit instituted in the year 2004, were barred by limitation, the issue of limitation was material to decide the controversy at the threshold.

04. It is also contention of the petitioners that they also raised a specific plea in the written statement that since respondent had admittedly received consideration of ₹4.50 lakhs at the time of execution of the compromise/surrender deed in the year 1993, he was estopped from seeking its annulment at this length of time.

05. Having heard the rival contentions, I have gone through the trial court record.

06. The controversy on hand revolves around a well-known maxim "*ei incumbit probatio, qui dicit, non qui negat*" which means that the burden of proof lies upon the person who affirms, but not who denies. To put it differently, the burden lies on the party who asserts the fact to be taken note of by the court in his favour because by the very nature of the pleadings, one who denies the fact cannot be burdened to produce the proof of the same. In other words, a negative is ordinarily incapable of proof.

07. Order XIV CPC deals with framing of issues and a bare reading of Rule 1(1) of Order XIV would indicate that when a material proposition of fact or law is affirmed by one party and denied by the other, then, an issue has to be framed by the Court. In other words, whoever desires the court to pronounce a judgment as to a legal right dependent on the existence of facts which he asserts, must prove that those facts exist.

08. When a material proposition of fact or law is affirmed by one party and denied by the other, every such proposition shall form the subject of a distinct issue. It is settled in law that primarily it is the obligation of the Court to frame the issues, and failure on the part of the Court may be remedied by either of the parties inviting attention of the Court to the need of framing such an issue, either by participating in the process of settlement of issues or by moving an application in terms of Rule 5 of Order XIV CPC. In other words, it is obligatory on the part of the Court to frame an issue once it is satisfied that an issue which should have been framed escaped its attention. Be it noted that if the Trial Court fails in framing an issue, or fails to remedy its failure, then even Appellate Court is vested with the power to frame an issue under Order XLI Rule 25 CPC.

Order XIV Rule 5 reads as below:

“5. Power to amend, and strike out, issues.—(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

09. It is evident from a plain reading of Rule 5 of Order XIV CPC that Court is vested with wide discretionary power to amend the

issues framed or frame additional issues at any time before passing a decree on such terms as it thinks fit, which may be necessary for determining the matter in controversy between the parties. Pertinently, the Court in terms of sub-rule (2) of Rule 5 of Order XIV is also vested with the power, at any time before passing a decree, to strike out any issue that appears to it to be wrongly framed or introduced. [see **P.S. Shivakumar vs P.H. Subbarayappa**; 2017 SCC OnLine Kar 2263, **Abbott Healthcare Private Limited vs Raj Kumar Prasad & Anr**; 2018 SCC OnLine Del 6657, and **Sana Herbals Private Limited vs Mohsin Dehlvi**, 2022 SCC OnLine Del 4482]

10. If the present case is approached with the aforesaid principles of law, there is no denial of the fact that petitioners in the written statement have taken a categorical stand that surrender/ relinquishment deed, admittedly executed between the parties in the year 1993, which is sought to be annulled by the respondent by way of the suit filed in the year 2004 after a gap of 10 years, was barred by limitation. It was also a specific stand of the petitioners that the rent deed executed by the Masjid Committee with respect to a shop in favour of defendant No. 2, in the suit, in 1983, which is sought to be annulled by the respondent by way of suit filed in 2004 after a gap of about twenty years, was also barred by limitation. They also raised a plea in the written statement that since respondent had admittedly received consideration of ₹ 4.50 lakhs at the time of execution of the aforesaid compromise/surrender deed in the year 1993, he was estopped from seeking its annulment.

11. It is manifest from a plain reading of the written statement filed by the petitioners that they had raised some material issues with respect to the maintainability of the suit and learned Trial Court was obliged to frame appropriate issues and return a finding on the said issues in accordance with law.

12. As stated, learned Trial Court dismissed the application filed by the petitioners for recasting and framing of additional issues holding that since suit has already suffered a number of transfer applications, amendments and revision petitions, the long pendency of the suit is to be given due weightage, and the issues already framed were sufficient to determine the controversy between the parties.

13. Benjamin Franklin once remarked —“Great haste makes great waste.” The Courts, while endeavoring to deliver speedy justice, must be alive to the controversy between the parties and the issues raised in the pleadings, and must never deny justice in overzeal to dispose the cases.

14. On a coalesce of the precedents rendered by Hon'ble Supreme Court and various High Courts of the country from time to time, what would unmistakably emerge is, that civil court has wide powers to frame issues, recast issues and frame additional issues at any stage of the proceedings before passing a decree, as may be necessary for determining the matter in controversy between the parties.

15. Mr. Z. A. Shah, the respondent, a practicing advocate of this Court, as always, has fairly admitted the legal position, but strenuously argued that the draft issues proposed by the petitioners are not pure legal issues, but mixed issues of law and fact.

16. Learned Trial Court framed additional issues in terms of order dated 08.07.2023 only on the basis of amended plaint filed by the respondent, but it was incumbent upon the Trial Court to have framed the additional issues on the basis of amended pleadings of both the parties. Whether the draft issues are pure legal or mixed questions of law and fact, can be left to the wisdom of learned Trial Court.

17. Having regard to what has been analyzed, observed and discussed above, the impugned order is found erroneous and is liable to be quashed. Hence, the present petition is allowed and impugned order dated 06.03.2024 is set aside. As a result, the application filed by the petitioners for recasting of issues and framing of additional issues shall stand allowed in part. Learned Trial Court shall frame the following additional issues:

- (i) Whether the present suit challenging Surrender/ Relinquishment deed executed in 1993 and registered in 1994 is time barred? **OPD**
- (ii) Whether the lease deed executed in 1983 challenged in the present suit is time barred? **OPD**
- (iii) Whether suit is barred by the Doctrine of Estoppel? **OPD**
- (iv) Whether the sale deed executed and registered by the deceased father of the petitioners in favour of his divorced daughter, defendant 3 is invalid? **OPP**

18. Learned Trial Court is directed to regulate its procedure in terms of this order and proceed with the trial of the case, in accordance with law.

19. Petition is accordingly **disposed of** along with the connected application(s) in the manner indicated above.

(Rajesh Sekhri)
Judge

SRINAGAR:

09.09.2026

Hamid

❖	Whether Judgment is Speaking?	Yes
❖	Whether Judgment is Reportable?	Yes