

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

CM(M) No. 222/2022

Rashida Muzaffar and Ors.

..... Petitioners

Through: Mr. Manzoor Ahmad Dar, Advocate

Vs

Mohammad Abdullah Rather

..... Respondent

Through: Mr. G. A. Lone, Sr. Advocate with
Mr. Mujeeb Andrabi, Advocate

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(25.02.2026)

01. The institution of this petition took place on **11.05.2016** when supervisory jurisdiction of this High Court was reserved and preserved under section 104 of the then Constitution of Jammu & Kashmir and, thus, invoking said jurisdiction, the petitioner- Muzaffar Ali Gazi (now deceased) and represented by his legal heirs substituted by reference to **CM No. 8202/2024** in terms of an order dated **07.07.2025**, sought examination of an order dated **07.06.2014** passed by the court of 3rd Additional District Judge, Srinagar in a civil suit on file **No. 5/Numberi** of **26.05.2011** whereby the Preliminary Issue No. 5 to the effect whether suit is not maintainable in present form, Issue No. 6 – whether the suit is also hit by Order 2 Rule 2 of CPC, Issue No. 7 – whether the

suit has not been properly valued and lacks due to proper court fees and Issue No. 9 – whether suit of the plaintiff is also liable to be dismissed for non-joinder of necessary party, all came to be decided.

02. The court of learned 3rd Additional District Judge, Srinagar held all the aforesaid issues in favour of the respondent and, thus, putting up the suit on evidence stage.

03. Said Muzaffar Ali Gazi was sole defendant in suit preferred by the respondent herein.

04. Upon institution of this petition, there was no interim direction with respect to the trial of the suit but record of the suit was sent for and perhaps that has held up the onward trial of the civil suit.

05. This Court disposes of this petition by holding that the aforesaid issues surely were not qualifying to be preliminary issues to be adjudicated pre-evidence stage at first instance in the suit as the same are of mixed element of law and fact and, thus, the trial court could have afforded to take up the adjudication of aforesaid issues along with the other issues as framed in terms of an order dated **26.09.2009**.

06. Infact, the original institution of suit is of **2008** before being transferred to the court of 3rd Additional District

Judge, Srinagar to be taken on file **No. 5/Numberi of 2011** and that means 2008 born civil suit is still at doorstep of its adjudication.

07. A perusal of order dated **26.09.2009** would show that while framing twelve (12) issues, the court below did not identify as to which of twelve (12) issues are the legal issues and, therefore, ought to have acted with reserve and taken up the adjudication of all the issues upon reading of evidence from both sides and then dispose of suit accordingly.

08. Therefore, order dated **07.06.2014** is hereby set aside without prejudice to the right and position of the parties to the suit at the final hearing of the suit when aforesaid issues be taken up adjudication.

09. The suit file record be returned with a direction to the court of 3rd Additional District Judge, Srinagar to revive the suit proceedings by issuing fresh summons to both sides for appearance for resumption of the trial from the stage onward framing of issues.

10. ***Disposed of.***

(RAHUL BHARTI)
JUDGE

SRINAGAR
25.02.2026
Opinder

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