

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

LPA 112/2026 in
WP(C) 971/2026
CM N o.3343/2026

MOHD. ANWAR MAPNOO

...Petitioner/Appellant(s)

Through: Ms. Arifa Jan, Sr. Advocate

Vs.

UT Of J&K & Ors.

...Respondent(s)

Through:

CORAM:

**HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER
04.06.2026**

1. After hearing learned counsel for the appellant at considerable length, we are not inclined to issue notice to the respondents, as we are of the considered view that the submissions advanced on behalf of the appellant do not persuade us to take a view different from that adopted by the learned Writ Court. The reasons which impel us to affirm the judgment under challenge are delineated hereinafter.
2. Briefly stated, Mutation No. 270 came to be attested in favour of the appellant in the year 2008, purportedly on the basis of a Will alleged to have been executed by one Mohammad Lone, the original owner of the land. The said mutation was subsequently challenged by the private respondents by way of a revision petition before the Additional Commissioner, Kashmir.

3. The appellant and the private respondents are closely related. The respondents are the children born from the appellant's first marriage with their mother. It is alleged that the appellant thereafter contracted a second marriage and abandoned the family, leaving behind his first wife, children, and mother-in-law. The respondents' grandmother, Mst. Shamali Begum, had only one daughter, namely the first wife of the appellant. According to the private-respondents, the marriage was arranged with the expectation that the appellant would reside with and look after the family. However, instead of fulfilling that expectation, he is stated to have entered into a second wedlock and deserted the family.
4. It was the specific case of the private respondents before the revisional authority that the appellant was having an eye upon the property of their deceased grand-father and had employed various means to secure its possession. According to them, he succeeded in obtaining attestation of the mutation by projecting himself as a *Khana Damad*. The revisional authority, while considering the challenge, held in terms of order dated 17.09.2025 that the Revenue Officer was under a legal obligation to hear all necessary parties before attesting the mutation and that such procedure had not been followed.
5. The revisional authority further noticed that the status of a *Khana Damad* is usufructuary and conditional in nature and does not, by itself, confer proprietary rights. It was observed that Section 2 of the Jammu and Kashmir Personal Law (Shariat) Application Act, 2007 mandates that, in matters of intestate succession, the estate of a Muslim shall devolve in accordance with the principles of

Shariat irrespective of any contrary custom. The Tehsildar, however, had directly attested the mutation in favour of the appellant as a *Khana Damad*, contrary to the mandate of Standing Order 23-A. It was further held that once a *Khana Damad* deserts the family and contracts another marriage, any incidental benefit flowing from such arrangement stands forfeited and the rights revert to the lawful heirs. Under the prevailing custom, on the death or remarriage of a *Khana Damad*, the property devolves upon the heirs of the father of the *Khana Nishin* daughter.

6. On the aforesaid reasoning, the revisional authority concluded that the mutation had been attested in violation of law and accordingly recommended that it be set aside and the inheritance be recorded in favour of the *Khana Nishin* daughter. The said reference was accepted by the Financial Commissioner by order dated 16.03.2026. The Financial Commissioner held that inheritance had been wrongly devolved upon the appellant and that Mutation No. 270 was void ab initio as being contrary to paragraph 64(b) of Standing Order 23-A. Consequently, the mutation dated 02.05.2008 was set aside and the matter remanded to the Tehsildar for fresh attestation in accordance with law.
7. It was this order which came to be challenged before the learned Writ Court. The appellant contended that he had been brought into the family as a *Khana Damad* pursuant to a Will and had married Mst. Haleema Bano, the mother of the private respondents. He asserted that after the death of his mother-in-law, Mst. Shamali Begum, the mutation was rightly attested in his favour on 02.05.2008 and that he had remained in peaceful possession of the

property ever since. It was further argued that the respondents had questioned the mutation after more than fifteen years on wholly untenable grounds.

8. The appellant also relied upon the fact that the respondents had earlier instituted proceedings before the Assistant Commissioner Revenue, Bandipora, which came to be dismissed on 29.11.2021 in view of a compromise arrived at between the parties. According to him, notwithstanding the said compromise, the respondents instituted the revision petition after an inordinate delay of over fifteen years. This is not in dispute that the mutation in question was attested in ex-parte and no opportunity of hearing was afforded to the children of Haleema in whose favour the mutation was required to be attested but for the Will.
9. The learned Writ Court, however, observed that the question whether any valid Will existed in favour of the appellant was essentially a disputed question of fact requiring adjudication before the competent forum. Since the matter had already been remanded to the Tehsildar for fresh consideration, the appellant would have full opportunity to establish his claim based upon the alleged Will and any compromise that may have been entered into between the parties. On that reasoning, the writ petition was dismissed.
10. Having heard learned counsel for the appellant, we find that it is not disputed that the appellant contracted a second marriage. At the same time, paragraph 64(b) of Standing Order 23-A expressly recognizes the custom of a *Khana Nishin* daughter prevalent in the Kashmir Valley. The provision clearly stipulates that where a *Khana Damad* is brought into the family, the mutation must be

attested in favour of the *Khana Nishin* daughter and not in favour of the *Khana Damad*. Upon the death of the *Khana Nishin* daughter, the estate devolves upon her sons and daughters. In the event she dies issueless, the estate may devolve upon her husband only till his death or remarriage. Upon the death or remarriage of the *Khana Damad*, the property reverts to the heirs of the father of the *Khana Nishin* daughter.

11. It was strenuously argued by learned counsel for the appellant that the challenge to the mutation was hopelessly delayed and that no satisfactory explanation had been furnished for questioning the mutation after such a long period. Reliance in this regard was placed upon the judgment of this Court in *Mst. Khati and Others v. Ali Mohammad Sofi and Another*, 2014 (4) JKJ 106.
12. There can be no quarrel with the proposition that a mutation challenged after an inordinate lapse of time ordinarily requires a satisfactory explanation. However, a different consideration arises where the mutation itself is *ex facie* contrary to the governing law. An illegality cannot be perpetuated merely because it remained unchallenged for a considerable period.
13. The appellant has not been able to dislodge the legal position that the mutation was attested in the year 2008 after the coming into force of the Jammu and Kashmir Personal Law (Shariat) Application Act, 2007, which mandates that matters of Muslim succession shall be governed by Shariat irrespective of customary practices.
14. Equally significant is the fact that the Tehsildar recorded the mutation in direct contravention of paragraph 64(b) of Standing

Order 23-A, which unequivocally provides that the estate cannot devolve upon a *Khana Damad* and that the mutation must be entered and attested in favour of the *Khana Nishin* daughter. Therefore, even assuming that the appellant had been inducted as a *Khana Damad*, the estate could never have been mutated directly in his favour. The legal scheme envisages attestation in favour of the *Khana Nishin* daughter, thereafter in favour of her children, and only in limited circumstances in favour of the husband during his lifetime or until remarriage.

15. The appellant nevertheless maintains that his claim arises from a Will. Be that as it may, once the matter stands remanded to the Tehsildar for fresh attestation in accordance with law, the appellant is at liberty to establish whatever rights he claims under the alleged testamentary instrument. The learned Writ Court was therefore justified in holding that the issue should be examined by the competent revenue authority in the first instance.
16. During the course of hearing, learned counsel for the appellant was also unable to controvert the legal position enunciated by this Court in *Rasheeda Akhter v. State of J&K*, 2005 Supreme (J&K) 273, wherein it was held that upon the death or remarriage of a *Khana Damad*, the property passes to the heirs of the father of the *Khana Nishin* daughter. The judgment further recognizes that where a *Khana Damad* abandons the marital relationship and enters into another matrimonial alliance, he forfeits whatever limited benefits may have accrued by virtue of the arrangement, the estate never vesting absolutely in him.

17. In view of the aforesaid legal position, we are satisfied that the ld.

Writ Court appreciated the controversy in its correct perspective.

The impugned judgment does not suffer from any legal infirmity warranting interference. The authorities below have also dealt with the matter strictly in accordance with law. We therefore find ourselves in complete agreement with the conclusions recorded by the learned Writ Court.

18. Accordingly, the appeal fails and is dismissed.

(SANJAY PARIHAR)
JUDGE

(RAJNESH OSWAL)
JUDGE

SRINAGAR:

04.06.2026

"S. Nuzhat"

Whether approved for reporting? Yes/No.

