

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Civil Rev. No. 14/2026

CM No. 3353/2026

CM No. 5420/2026

Reserved on: 01.09.2026

Pronounced on: 09.09.2026

Uploaded on: 09.09.2026

Whether the operative part or full judgment is pronounced- Full

Shabir Ahmad Beigh

S/O Ghulam Rasool Beigh,

R/O S.R.Gunj, Srinagar.

...Petitioner(s)

Through: Adv. Mohammad Ashraf Bhat.

Vs.

1. Ram Prakash Matta

S/O Late Harish Chand Matta

R/O S.R.Gunj, Srinagar

At present New Rohtak Road,
New Delhi-5.

...Respondent(s)

2. Bashir Ahmad Pootu (Dead)

S/O Ghulam Mohammad Pootu

R/O Banday Kocha Mahraj Gunj,
Srinagar.

Through Legal Heirs:

- (i) Mst. Saleema (wife)
- (ii) Nadeem Bashir Pootu (son)
- (iii) Nadia Bashir (daughter)

...Proforma respondent(s)

Through: Adv. Soayib Qureshi, for R-1.
Adv. Athar Rashid, for R-2.

CORAM: HON'BLE MR. JUSTICE M. A.CHOWDHARY, JUDGE

JUDGMENT

- 1.** The instant Civil Revision Petition is directed against the order dated **26.02.2026** passed by the court of learned

City Judge Srinagar (hereinafter 'trial court' for short) in a suit titled **Ram Prakash Matta Vs. Shabir Ahmad & Anr.**, whereby the learned Trial Court decided a preliminary legal issue in favour of the plaintiff/respondent No.1 herein and against the defendant/petitioner herein. For the purpose of convenience of reference the parties hereinafter shall be called respondent No.1 as 'plaintiff' and petitioner and respondent No.2 as 'defendants' as in the suit before the trial court.

2. The controversy between the parties has its genesis in the execution, alleged cancellation and subsequent use of a Power of Attorney in respect of immovable property consisting of a four storeyed residential house with shops and attic on land measuring 1315 sq.ft and 6 inches situated at Tanki Sarai, S.R.Gunj, Srinagar, falling under Khasra No. 669/1 min, recorded as 'Abadi Deh'.
3. The plaintiff claims to be the owner of the said property stated to have fallen to his share pursuant to a family settlement with the other legal heirs in the year 1994 and that he is a registered migrant, who had left the Valley in the year 1990.
4. Perusal of the pleadings in the present case reveals that the plaintiff had executed a Power of Attorney in respect of the suit property in favour of defendant No.2-Bashir

Ahmad Pootu, which was registered on **04.12.2000**, authorizing the attorney to deal with the property including to sell, on behalf of plaintiff. It is the case of the plaintiff that the said Power of Attorney (PoA) was later cancelled before a Notary Public at Delhi on **27.09.2002** and consequently any Sale Deed executed, thereafter, by the attorney being without authority is null and void.

- 5.** Plaintiff filed a declaratory suit for cancellation of sale deed executed fraudulently and in connivance by both the defendants in favour of defendant No.1 on **30.11.2005**, which was registered by the Sub Registrar, Srinagar on **09.01.2006** and permanent injunction on the ground that defendant No.2, who was given PoA on **05.12.2000**, was not competent to execute the questioned 'sale deed', as the PoA was later on and before execution of sale deed on **30.11.2005**, had been cancelled by the plaintiff on **28.09.2002**. Therefore, the execution of sale deed is illegal and liable to be cancelled.
- 6.** The defendant No.1-Shabir Ahmad, however, disputed the aforesaid assertion. His case is that the plaintiff had executed another Power of Attorney on **23.08.2003** in favour of defendant No.2- Bashir Ahmad Pootu, *inter alia*, for purposes connected with mutation of the property in the revenue records; that the plaintiff

himself also approached the office of the Divisional Commissioner Kashmir on **31.03.2004** seeking permission for alienation of the suit property and submitted the requisite documents and affidavit; that the Sale Deed was executed on **30.11.2005** for a consideration amount of Rs.10,11,638/- by the Attorney in his favour and was registered before the Sub-Registrar on **09.01.2006**.

7. The defendant No.1, upon entering appearance before the Trial Court, raised objections regarding the maintainability of the suit, cause of action, jurisdiction and other connected matters; that the plaintiff had himself approached the competent authority for permission for alienation and that material facts, had been suppressed by him while filing suit.
8. The Trial Court on the basis of the pleadings of the parties, framed issues in the suit and one of the issues framed, reads as under:

“Whether the registered power of attorney can be cancelled by power of attorney which has been notarized, if so, what would be its effect on the instant suit?” (OPD)

9. The aforestated issue was treated as preliminary issue and after hearing the parties came to be decided vide impugned order, in favour of the plaintiff and against the defendants, holding that if PoA does not create any interest in favour of agent, then same can be terminated or revoked through notice or communication only and

there is no need of registering instrument in this behalf, as such, PoA dated **01.12.2000**, executed by the plaintiff for the convenience, did not create any interest of agent/defendant No.2, which was the subject matter of PoA and therefore, same could be cancelled by notice or communication, without registration of an instrument.

10. Learned counsel for the defendants argued that the Trial Court has committed illegality in deciding the issue in the manner it has been done; that the question relating to cancellation of the registered Power of Attorney cannot be determined merely by looking at the Notarised document relied upon, particularly when the defendant No.1 had pleaded the existence of a subsequent Power of Attorney dated 23.08.2003 and the respondent's own conduct in approaching the Divisional Commissioner for permission to alienate the property; that the controversy requires evidence regarding execution, cancellation, subsequent authorization, conduct of the parties and the circumstances in which the Sale Deed came to be executed.

11. Learned counsel for the plaintiff, ex-adversus, contends that the registered Power of Attorney stood cancelled before execution of the Sale Deed and, therefore, the attorney had no authority to execute the sale transaction; that the issue has been rightly decided, in

accordance with law and based on this finding, the suit can be decided at the early stage, determining the cancellation of the questioned sale deed.

12. Heard learned counsel for the parties, perused the record and considered the same.

13. From the pleadings, it is apparent that an irrevocable Power of Attorney was executed by the plaintiff in favour of the defendant No.2 which was registered on **05.12.2000** in the office of Sub-Registrar at Srinagar with regard to the property of the plaintiff, which is the subject matter of suit pending before the trial court.

14. It is the contention of the plaintiff in his plaint that the said registered irrevocable Power of Attorney was cancelled by him on **28.09.2002** attested by Advocate R.R.Gupta Notary Public, in Delhi. The defendant No.2, however, executed the sale deed with regard to the suit property on **30.11.2005** in favour of defendant No.1 based on the PoA executed by plaintiff on **05.12.2000** and the sale deed came to be registered before the jurisdictional Sub Registrar on **09.01.2006**. This is the document which is the subject matter of the suit before the trial court, essentially on the question that the sale deed could not have been executed by the defendant No.2 in favour of defendant No.1 based on the PoA executed by the plaintiff which was later revoked by him.

15. The defendants, however, in their written statements submitted that the plaintiff had executed another PoA in favour of defendant No.2 with regard to the same property authorizing him to appear on his behalf before the revenue and statutory authorities and to seek mutation with regard to the property in question; that the plaintiff had himself applied for permission under the **Jammu & Kashmir Migrant Immoveable Property (Preservation, Protection and Restraint On Distress Sales) Act, 1997 (Migrants Act)** to the Divisional Commissioner, Kashmir on **31.03.2004** and the sought for permission was granted by Mr.B.B.Vyas the then Divisional Commissioner, Kashmir on **06.11.2005** against the sale consideration of Rs.10,11638/-, as such, they took a plea that the plaintiff is debarred from raising the question of cancellation of the earlier PoA in view of his later action in seeking permission from the Divisional Commissioner, Kashmir in terms of the **Migrants Act** and also authorizing the defendant No.2 to appear before the authorities on his behalf, as such, the plaintiff is estopped from taking that plea in the case before the trial court.

16. The trial court framed various issues vide interim order dated **05.06.2012** and vide order dated **26.04.2018** the following issue was framed on the subject of legality with regard to cancellation of the PoA through a

notarized document of cancellation, which reads as under:-

“Whether the registered power of attorney can be cancelled by power of attorney which has been notarized, if so, what would be its effect on the instant suit? OPD”

- 17.** The trial court after hearing the arguments on the subject held that a registered PoA can be cancelled by a notarized document also when PoA sought to be cancelled did not create an interest of the attorney in the subject matter, relying upon the judgments of the Apex Court and different High Courts, it was concluded that the registered PoA can be cancelled either orally communicated or by a notarized document.
- 18.** It is against the aforesaid order passed by the court below that defendant no.1 has challenged the same before this Court particularly in view of the fact that the plaintiff after recording a finding on this preliminary legal issue has been pressing an application moved by him in terms of Order XII Rule 6 of CPC, to decree the suit based on the finding returned on this preliminary issue, without conducting further trial in the suit.
- 19.** It appears that the defendant No.1 without raising all these issues which have been raised in this revision petition before the court below so as to oppose the application moved by the plaintiff to decree the suit

invoking Order XII Rule 6 of CPC has rushed to this Court invoking the revisional jurisdiction of this Court by filing the instant Civil Revision Petition.

20. Learned counsel for the defendant No.1 has failed to show any legal provision or any case law so as to substantiate that a registered PoA cannot be cancelled by a notarized document or even orally as has been decided by the court below based on case laws.

21. There is no quarrel with regard to the legality of the order passed by the court below on the subject that a registered PoA can be cancelled without registering such a document of cancellation, however, it is an important fact to be considered by court below that whether cancellation of PoA on which the sale deed was executed had been conveyed to the attorney before execution of sale deed or not. This is a question which has not been addressed by the court below while deciding the issue so as to record as to what could be the effect of the finding on the suit pending before the trial court. Perhaps this is the reason that the finding on the effect on the afore-stated preliminary issue was not recorded and case was ordered to be listed for further trial.

22. The defendants can also raise the other issues which have been raised before this Court in this petition before the trial court while opposing the application moved by the plaintiff in terms of Order XII Rule 6 of CPC, such as

execution of subsequent PoA by the plaintiff in favour of defendant No.2 with regard to the same property and also applying for permission to sell the property in favour of defendant No.1 under the Migrants Act.

23. For the foregoing reasons and the observations made hereinabove the impugned order does not suffer from any illegality or perversity so as to call for any interference invoking the revisional jurisdiction of this Court. The instant civil revision petition is found to be misconceived and being bereft of any merit and substance is, as such, **dismissed**.

24. The record of the trial court be returned forthwith along-with a copy of this judgment.

**(M. A. CHOWDHARY)
JUDGE**

Srinagar
09.09.2026
Muzammil. Q

Whether the order is reportable: Yes / No