

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

**CM No. 3949/2026 in CM(M) No. 258/2026
Caveat No. 1497/2026**

Abdul Gani Sheikh

...Appellant(s)/Petitioner(s)

Through: Mr. Ishtiyag Ahmad Mir, Advocate

Vs.

Showkat Ahmad Khan and Ors.

...Respondent(s)

Through: Mr. Sheikh Mushtaq, Advocate vice
Mr. Owais Shafi, Advocate

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE.

**ORDER
03.07.2026**

1. With the presence of Mr. Sheikh Mushtaq, learned counsel appearing vice Mr. Owais Shafi, learned counsel for the caveator, caveat stands discharged.
2. By this petition, petitioner herein has invoked jurisdiction of this Court under Article 227 of the Constitution of India, thereby challenging orders dated 12.05.2026 and 29.06.2026, passed by the learned Civil Judge (Junior Division), Chadoora, as well as consequential execution proceeding arising therefrom including eviction notice dated 30.06.2026 issued by Tehsildar.

FACTUAL MATRIX:

3. Petitioner is stated to be an absolute owner and in lawful possession of the residential property comprising a three-storied house along with land measuring 1 Kanal and 3 Marlas, falling under Survey No. 148, Khewat No. 31, Khata No. 129, situated at Kantbagh, Manchowa, Budgam. Possession of the petitioner over the suit land is on the basis of an agreement to sell, executed on 27.05.2009, between petitioner and

respondent No. 1, whereby, Respondent No. 1 had agreed to transfer the said property in favour of the petitioner for a total consideration of Rs. 27 lacs, which was duly paid to the respondent, pursuant to which possession was handed over to the petitioner herein.

4. Petitioner filed a suit for permanent prohibitory injunction, bearing File No. 69/2029, decided on 13.03.2018 by the learned Munsiff Chadoora, wherein it was held that petitioner is in lawful and settled possession of the suit property, accordingly, decree was passed in his favour, whereby, respondent No.1 has been restrained permanently from causing any interference in his possession or from creating any third-party interest therein. Petitioner had also instituted a suit for declaration and injunction before the learned court of Munsiff at Chadoora, wherein respondent No. 1 executed a compromise deed dated 12.11.2022, thereby admitting and acknowledging the claim of the petitioner with respect to ownership over the suit property. Consequently, learned Munsiff Chadoora, vide judgment and decree dated 14.03.2023, passed a compromise decree, declaring petitioner as an absolute owner of the suit property. In due recognition of the civil court decree, mutation No. 1622 dated 11.10.2023 was attested in favour of the petitioner with respect to the suit property.

5. Respondent No.2, who is stranger to the suit property, instituted a suit bearing File No. 114-N on 17.10.2018, to sought mandatory injunction with respect to the suit property. The said proceedings culminated in an ex-parte decree dated 07.09.2022, thereby directing delivery of possession of the suit property in favour of Respondent No. 2. It is stated that the petitioner was never served in the said proceedings, as such, he preferred an application under Order IX Rule 13 of the Code of Civil Procedure, seeking setting aside of the ex-parte decree against him. The said

application was dismissed for non-prosecution, subsequently restored by order dated 27.08.2024.

6. During the course of execution proceedings arising out of the decrees, petitioner filed an application for staying of the execution proceedings. The court, after realizing the controversy involved in the matter, passed an order dated 06.05.2023, to stay the proceedings and also on other application under Section 151 of Code of Civil Procedure, 1908, vide order dated 28.02.2024, exercised its inherent powers, thereby staying execution of all competing decrees. It was specifically observed that the questions relating to priority and enforceability of the competing decrees required determination before any coercive steps could be taken, parties were directed to maintain status quo and refrain from creating any third-party interest in the suit property. However, despite the judicial restraint and pendency of the petitioner's application under Order IX Rule 13 CPC, learned Executing court proceeded to pass an order dated 12.05.2026, thereby directing concerned Tehsildar to dispossess the petitioner. Relevant paragraph is being reproduced as under:

“10. Accordingly, the execution petition is allowed. The tehsildar concerned is directed to execute the decree and hand over vacant and peaceful possession of the suit property comprising two storied residential house along with land measuring 1 Kanal and 1 Marla falling under Survey No. 917, Khewat No. 217 and Khata No. 265 situated at Muchoua, Tehsil B.K Pora, District Budgam to the decree-holder in accordance with law.”

7. Petitioner also initiated execution proceedings with respect to the decrees passed in his favour. Learned Executing court, vide order dated 12.06.2026, directed concerned Tehsildar not to dispossess the petitioner until further orders, thereby granting interim protection in favour of the

petitioner. Subsequently, by order dated 29.06.2026, learned Executing court recalled the earlier protection granted to the petitioner and permitted execution of the ex-parte decree in favour of respondent No.2, thereby directing eviction of the petitioner from the suit property, pursuant to which Tehsildar concerned issued an eviction notice dated 30.06.2026 calling upon petitioner to vacate the suit property within a period of five days.

8. It is stated by the learned counsel for the petitioner that Executing court has not proceeded in accordance with law. The Executing court has failed to consider the order dated 28.02.2024, whereby execution of all competing decrees was specifically stayed under Section 151 CPC. It is further stated that petitioner's application under Order IX Rule 13 of CPC for setting aside ex-parte decree dated 07.09.2022 is also pending adjudication before the court, as such, order impugned dated 12.05.2026 and 29.06.2026 are in contradiction to the order 28.02.2024. It would be profitable to quote relevant paragraph from the order passed in '*Shujat Amin Rather v. Abdul Gani Sheikh*', dated 28.02.2024, as under:

“15. Therefore, invoking powers under Section 151 CIP, I deem it proper to stay the execution of all the three decrees till its decided as to one who has having a preferential right as to who was having the priority, as to whether a sale deed executed and registered after a notice of possession shall be having any force in law or not. These all questions shall be decided while deciding that question of execution, discharge and satisfaction of a decree. Till next date of hearing which is dated 30th of March, 2024 and all the files are preponed on 30th of March 2024 for decision. The parties are hereby directed not to do any act of waste or damage to the suit property and at the same time not to create any third party interest and at the same execution of all the three decrees are stayed.”

9. Learned counsel for the respondents has stated at Bar that as on date, there is only one Execution petition which is pending before the court of learned Munsiff, Chadoora, wherein the impugned order dated 12.05.2026 has been passed. However, order dated 29.06.2026 has been passed in the execution petition filed by the petitioner in case titled '*Abdul Gani Sheikh v. Showkat Ahmad Khan*', wherein, the interim protection granted to the petitioner, dated 12.06.2026, has been recalled/vacated, with a clarification that it would not have any impact on the execution petition and the rights and contentions of both the parties shall be considered independently at the time of final adjudication of the execution application. He has further stated that the sale deed was executed in the year 2014 between respondent No.1 and 2, as such, he has a better claim with respect to the property in dispute than the petitioner herein. He further states that the petitioner has challenged two orders passed by the court of Civil Judge (Junior Division), Chadoora, which have been passed in two different execution petitions, as such, the instant petition is not maintainable.

10. Heard learned counsel for the parties, perused the material on record and considered the submissions of the learned counsel for the parties.

11. Petitioner herein has approached this court against order dated 12.05.2026 and 29.06.2026 passed by the court of learned Civil Judge (Junior Division), Chadoora in two different execution applications, wherein, Tehsildar concerned has been directed to execute the decree, thereby handing over vacant and peaceful possession of the suit property comprising two-storied residential house along with land measuring 1 Kanal and 1 Marla, falling under Survey No. 917, Khewat No. 217 and Khata No. 265 situated at Muchoua, Tehsil B.K. Pora, District Budgam,

which is in possession of the petitioner herein to the decree holder, i.e., Respondent No.2, Shujat Amin Rather. In the impugned order dated 29.06.2026, interim order dated 12.06.2026, which was passed in favour of the petitioner herein, has been recalled. These are two orders passed in two different execution petitions, one preferred by respondent No.2 and other by the petitioner herein. Petitioner has also challenged notice dated 30.06.2026, wherein he has been directed to evict the decretal property supra within a period of five days.

12.Learned counsel for the respondents states that he has no objection if learned Civil Judge (Junior Division), Chadoora be directed to consider the execution petitions which are pending before the said court in the competing decrees filed by the petitioner as well as by respondent No.2. However, learned counsel for the petitioner states that the execution applications may not be considered till his application under Order IX Rule 13 for setting aside ex-parte decree be considered and decided by the competent court.

13.The jurisdiction, in terms of Article 227 of the Constitution of India, is not to be exercised in ordinary circumstances but only in cases which fall within any of the following categories. It would be profitable to reproduce the relevant paragraph of the judgment of the Supreme Court delivered in case titled '*Nandi Infrastructure Corridor Enterprises Ltd. & Anr. v. B. Gurappa Naidu & Ors.* reported as '*2026 SCC OnLine SC 745*':

“35. In short, the principles laid down in the above matters is as follows:

- a) The power of superintendence under Article 227 is not to be exercised unless there has been an (a) unwarranted assumption of jurisdiction, not vested in Court or tribunal, (b) gross abuse of jurisdiction or (c) an unjustifiable refusal to exercise jurisdiction vested in Courts or tribunals.*

- b) *It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record.*
- c) *The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.”*

14. In view of the above, without expressing any opinion on the merits of the case, writ petition is disposed of with a direction to Civil Judge (Junior Division), Chadoora, to consider the execution petitions of the petitioner as well as of the respondent with respect to their competing decrees simultaneously, in order to avoid any conflicting order in the execution petitions, after affording opportunity of being heard to the petitioner as well as respondents, expeditiously within a period of four weeks from the date of passing of this order. However, till the execution petitions are considered and decided, impugned notice dated 30.06.2026 shall remain stayed.

(MOKSHA KHAJURIA KAZMI)

JUDGE

SRINAGAR:

03.07.2026

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