

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

**FAO 21/2026 CM(4146/2026)**  
**Caveat 1462/2026**

**MOHAMMAD HASHIM QURESHI AND ANOTHER**

..... Appellant(s)

Through: Mr. Syed Faisal Qadiri, Sr. Adv.  
with Ms. Shaifta Afreen Balki, Adv..

V/s

**JUNAID QURESHI**

..... Respondent(s)

Through: Mr. Hakeem Suhail Ishtiyag, Adv.

**Coram:**

**Hon'ble Mr. Justice Sanjay Dhar, Judge**

**ORDER (ORAL)**

10.07.2026

1. The appellant/plaintiffs through the medium of present appeal have challenged order dated 27.06.2026 passed by learned Additional, District Judge Srinagar in an application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure filed by them along with the suit. By virtue of the impugned order, the learned trial court has dismissed the application of the appellants to the extent of 03 Kanals of land falling under Survey No. 2038/1419 situated at Gupt Ganga, Ishber, Nishat, Srinagar while

- directing the parties to maintain status quo with regard to balance land measuring 05 Kanals and 10 Marlas falling under Survey Nos. 2038/1419 and 2085/1417 located at the same place.
2. Issue notice to the respondents.
  3. Mr. Hakeem Suhail, Advocate who is on caveat accepts notice on behalf of the respondent. Caveat is accordingly discharged.
  4. Heard learned counsel for the parties and perused the record of the case.
  5. It appears that the appellants/plaintiffs have filed a suit against the respondent/defendant seeking declaration that gift deed executed by the plaintiff No. 2 in favour of the defendant in respect of aforesaid land measuring 03 Kanals in Khasra No. 2038/1419 as also the mutation No. 5116 attested in favour of the defendant, be declared as illegal, void and inoperative. The plaintiffs have also sought a decree of possession directing the defendant to vacate and handover peaceful possession of the portion of the residential house which is under his occupation to

- plaintiff No. 1. Besides this, the plaintiffs have also sought a permanent prohibitory injunction restraining the defendants from encroaching upon or obstructing in the peaceful possession and enjoyment of the plaintiffs over the suit land measuring 08 Kanals and 10 Marlas and the residential house situated thereon. A decree for mesne profits for use and occupation of portion of the suit property by the defendant has also been sought.
6. Briefly stated the case set up by the plaintiffs before the trial court is that whole of the suit land measuring 08 kanals and 10 marlas was purchased in the name of plaintiff No. 2 out of funds provided by the plaintiff No. 1. It has been further pleaded that out of suit land, 03 kanals of land falling under Khasra No. 2038/1419 was gifted by the plaintiff No. 2 in favour of the defendant vide gift deed dated 25<sup>th</sup> July 2002 pursuant where to mutation No. 5116 was attested in favour of the defendant. It is case of the plaintiffs that even though the gift deed was executed and the mutation was attested in respect of 03 Kanals of suit land, it was never demarcated and the defendant never

took possession of the said land. It is further case of the plaintiffs that the said land forms part of the lawn and garden of the house constructed by plaintiff No. 1 over other portion of the suit land measuring 03 kanals falling under same Khasra No.

7. It has been submitted that plaintiff No. 1 being in possession of the entire suit land has constructed a separate single storey annexe and two staff quarters thereon. The entire suit land measuring 08 Kanals and 10 Marlas is appurtenant to the residential house constructed by plaintiff No. 1. It is being further claimed by the plaintiffs that the defendant orally gifted back land which was gifted to him by plaintiff No. 2 by way of a duly sworn affidavit which has been made part of the plaint. It has been pleaded that conduct of the defendant against the plaintiffs is abusive and unbecoming of a son. Several instances of such conduct have been mentioned in the plaint.

8. It has been submitted that plaintiff No. 1 travelled abroad in the months of October to November, 2025 in

connection with his medical treatment but when he returned to Srinagar, the defendant had unlawfully trespassed and occupied portion of the residential house without the knowledge and consent of the plaintiff No. 1. It has been submitted that notwithstanding the revocation of permission earlier granted by plaintiff No. 1 to the defendant to reside in the suit property, he refused to vacate the premises and continued to occupy the main ground floor of the house forming part of the suit property unauthorizedly, illegally and forcibly. It has been submitted that presence of defendant in the suit property has made it impossible for plaintiff No. 1 and his wife to live in his own house. It has been contended that the very foundation upon which the gift deed was executed in favour of the defendant has been eroded on account of conduct of the defendant, as such, the gift deed has become void and inoperative.

9. The defendant has filed written statement to the plaint in which it has been submitted that plaintiff No. 1 has no locus standi to challenge the gift deed as the same has

been executed by plaintiff No. 2. It has also been contended the suit is hopelessly barred by limitation as the gift deed was executed way back in the year 2002. The defendant has denied having sworn affidavit on which the plaintiffs are relying, to contend that the defendant has orally gifted back 03 Kanals of land to plaintiff No. 1. It has been contended that the defendant is in actual physical, peaceful and lawful possession of 03 kanals of land and a one-story house with a built-up area of 1400 sq. ft which he has constructed out of his own earnings. It has been submitted that the property owned and possessed by plaintiff No. 1 in the suit land is distinct from the defendant's absolute property.

10. The learned trial court after hearing the parties and after analyzing the pleadings came to the conclusion that the defendant 'prima facie' is in possession of the 03 Kanals of suit land comprised in Survey No. 2038/1419 along with single storey house constructed thereon. While recording the said finding, the learned trial court has relied upon registered gift deed executed by the plaintiff No. 2 in

favour of the defendant and reliance has also been placed on mutation recorded in favour of the defendant to the extent of aforesaid portion of the suit land. The learned trial court has also recorded the finding that regarding balance 05 Kanals and 10 Marlas of suit land, the defendant has no claim.

11. It is a settled law that the appellate court while determining the legality of order passed by a trial court on an application under Order XXXIX Rule 1 and 2 of CPC, has a restricted jurisdiction. It is only if the trial court has made a finding of fact which is perverse or irrational, or findings of the trial court are contrary to law or the trial court has committed a jurisdictional error or the trial court has acted capriciously, that it would be open to the appellate court to interfere in the order passed by the trial court under Order XXXIX Rule 1 and 2 of CPC.

12. If we have a look at the impugned order passed by the trial court, it is clear that the finding of the court to the extent of the defendant being in possession of 03 kanals of land and single storey house comprised in survey No.

2038/1419 is based upon cogent material. In fact even the plaintiffs have admitted that the defendant is in possession a portion of the suit property land and it is for this reason that the plaintiffs are seeking decree of mesne profits against the defendant for his alleged unauthorized use of the said portion of the suit property. Besides this, the ownership and possession of defendant over a portion of suit property is supported by the registered gift deed executed by plaintiff No.2 in his favour as also by the subsequent mutation attested in his favour. Thus, dismissal of application of the plaintiffs for grant of interim injunction to the extent of 03 kanals of suit land comprised in Khasra No. 2038/1414, is perfectly in accordance with the law.

13. However, the learned trial court despite noticing that the defendant has not raised any claim with regard to balance suit land measuring 05 Kanals and 10 Marlas has proceeded to pass status quo order against both the parties thereby virtually issuing interim direction against the plaintiff in his suit. The same is impermissible in law.

Once the trial court has recorded a finding that the defendant has no claim with regard to 05 Kanals and 10 Marlas of the suit land, it was not open to the said court to pass a direction against the plaintiff to maintain status quo on spot. The said part of the direction passed by the learned trial court is unsustainable in law and as such deserves to be set aside.

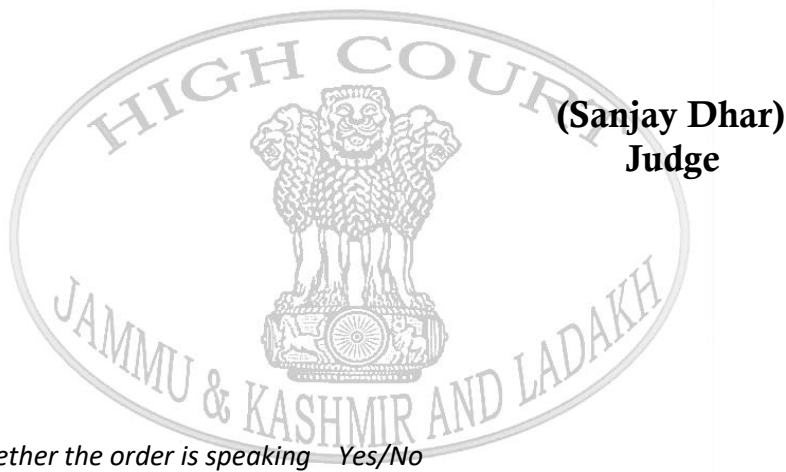
14. It is admitted case of the parties that the plaintiff is in possession of 05 Kanals and 10 Marlas of the suit land and the claim of the title of the plaintiff over the said portion of the suit land has not been disputed by the plaintiff. Thus, there is a *prima facie* case in favour of the plaintiffs to this extent. Their apprehension that the defendant is trying to interfere and encroach upon said portion of the land was required to be addressed by the trial court by passing appropriate directions against the defendant.

15. In view of what has been discussed hereinabove, the appeal is partly allowed. While setting aside the direction passed by the learned trial court asking the parties to maintain status quo with regard to land measuring 05

Kanals and 10 Marlas falling under Survey No. 2038/1419 and 2085/1417, it is directed that the defendant shall not cause any interference in the plaintiffs peaceful possession over the said portion of the suit land.

16. The appeal stands *disposed* of.

**SRINAGAR**  
10.07.2026  
*Aasif*



Whether the order is speaking Yes/No

Whether the order is reportable Yes/No