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Regular

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

CM(M) 418/2026 CM(6288/2026)

Caveat 1698/2026

FAREED HUSSAIN AND OTHERS

..... Petitioner(s)

Through: Mr. N. H Shah, Sr. Advocate. with
Ms. Sofia Ghulam, Advocate.

V/s

SYED QALANDAR SHAH

..... Respondent(s)

Through: Mr. Aqib Ajaz, Advocate.

Coram:

Hon'ble Mr. Justice Rajnesh Oswal, Judge

ORDER

21.09.2026

1. With the appearance of Mr. Aqib Ajaz, Advocate, caveat as lodged shall stand discharged.
2. With the consent of the learned counsel for the parties, the petition is taken up for final disposal.
3. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India for assailing and setting aside of the order dated 07th July 2026 passed by the learned Civil Judge (Senior Division), Uri District Baramulla (for short the 'trial court') in a suit titled *Syed Qalander Shah Vs. Fareed Hussain and Others*" whereby the application preferred by the petitioner under Order VI Rule 17 of the CPC seeking amendment of the written

- statement and application under Order XXVI Rule 9 of CPC for issuance of local commission were rejected.
4. Learned counsel for the parties are at *adidem* that the application seeking amendment of the written statement/counter claim was preferred by the petitioner before issues were framed by the learned trial court. The learned trial court has rejected the application for amendment of the written statement/counter claim on the ground that allowing of the amendment in the written statement/counter claim at this stage would seriously prejudice the case of the respondent/plaintiff and the petitioner has made admission which cannot be withdrawn.
5. The application under Order XXVI Rule 9 of CPC preferred by the petitioner has been rejected on the ground that the local commission cannot be issued to collect the evidence at this stage.
6. This is true that the petitioner has taken a contradictory plea in the written statement and through the medium of the application seeking amendment of the written statement/counter claim, the petitioner wanted the deletion of plea of adverse possession made in the written statement/counter claim. A perusal of the written statement preferred by the petitioner reveals that the petitioner claims to be the owner in possession of land measuring 03 Kanals and 02 marlas comprising of Khasra No. 358 situated at Village Shahdara Tehsil Uri, Baramulla and simultaneously the petitioner

- has also pleaded ownership on the basis of adverse possession. Both the pleas were mutually destructive. It is this incongruence in the pleadings that the petitioner intended to remove and accordingly application for amendment of the written statement/counter claim was filed.
7. During the course of arguments, learned counsel for the parties have reached a consensus that the application for amendment of the written statement/counter claim preferred by the petitioner be allowed and rightly so because the issues were yet to be framed and the trial had not commenced. It needs to be noted that the issues were framed after the order impugned was passed by the trial court. However, this court finds that the order impugned to the extent of rejection of the application filed by the petitioner under Order XXVI Rule 9 of CPC cannot be interfered with, as the learned trial court has rightly held that the commission cannot be issued at this stage to collect evidence. Needless to say, that the application preferred by the petitioner was under Order XXVI Rule 9 of CPC and not under Order IX Rule 7 of CPC.
8. In view of the above the order impugned is set aside to the extent of rejecting the application preferred by the petitioner for amendment of the written statement/counter claim. The petitioner shall file the amendment of the written statement/counter claim within a period of 14 days from today. So far as the relief sought

by the petitioner for quashing the order impugned to the extent of rejecting the application preferred by him under Order XXVI Rule 9 of CPC is concerned, the same is denied.

9. Disposed of as above.

(Rajnish Oswal)
Judge

SRINAGAR

21.09.2026

Aasif

