

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

CM(M) 260/2023

Date of Pronouncement: 25.09.2026

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|---|---------------------------------------|
| 1. Ghulam Mohd Ganaie, Aged 45 Years
S/O Ghulam Ahmad Ganaie | ...Appellant(s)/Petitioners(s) |
| 2. Abdul Hameed Ganaie, Aged 35 years
S/O Ghulam Mohd Ganaie | |
| 3. Mst. Yasmeena, Aged 35 years
W/O Abdul Hameed Ganaie
Residents of Chitragam Kalan
Tehsil Chitragam District Shopian | |

Through: Mr. Rizwan ul Zaman, Advocate

Vs.

- | | |
|--|-------------------------|
| 1. Mst. Sajida Begum
D/O Ghulam Ahmad Ganaie | ...Respondent(s) |
| 2. Mohd Ishfaq Naikoo
S/O Mst. Shahmali | |
| 3. Mst. Zubaida Akhter | |
| 4. Mst. Firdousa Akhter | |
| 5. Mst. Rashida Jan | |
| 6. Mst. Rukhsana Akhter
D/O Mst. Taja | |
| 7. Shameem Ahmad Mir
S/O Mst. Taja
All residents of Chitragam Kalan
Tehsil Chitragam District Shopian | |

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE.

JUDGMENT

25.09.2026

1. Respondents, despite service, are continuously absent. They are set ex-parte and petition is taken on board for consideration.
2. Petitioners have invoked supervisory jurisdiction of this Court, under Article 227 of the Constitution of India, for quashment of order dated 22.08.2023, passed by learned Sub-Judge Shopian ['the trial court'],

whereby, their application for deletion of some issues, came to be dismissed.

3. Brief facts of the case are that respondents preferred a civil suit in the trial court for the annulment of judgment and decree for partition and possession by metes and bounds, in case titled “*Ab. Hameed Ganaie & Anr. Vs. Mohummad Ganaie*” [File No. 860]. The petitioners/defendants, filed the written statement and learned trial court, having regard to the material propositions of law and fact, affirmed by the plaintiffs and denied by the defendants, framed issues in terms of order dated 06.12.2022.
4. After framing of the issues, the plaintiffs, respondents herein, filed application for recasting of issues on the basis of paras 13 & 14 of the plaint and learned trial court vide order dated 08.04.2023 framed three additional issues.
5. Later the petitioners filed application before the trial court for deletion of issues No. 9, 13 & 14, as also the additional issues. Respondents also preferred an application for summoning of record from the record room of District Court Pulwama.
6. Learned trial court by virtue of a composite order, impugned herein, disposed of both the applications filed by the petitioners for deletion of issue No. 9, 13 & 14 and additional issues, as also the application filed by the respondents for recalling the record.
7. Grievance of the petitioners is restricted to the refusal, on part of the trial court, to delete issue No. 9, 13 & 14, which, for the facility of reference are extracted below:

9. *Whether the impugned collusive decree has been passed in violation of provision of Section 31 of Agrarian Act 1976 as such decree merits to be declaration null and void? OPP?*

13. *Whether impugned decree has been passed in violation of provisions of Section 5 of Jammu and Kashmir Alienation of Land Act 1995 as such decree is liable to be set aside? OPP*

14. *Whether oral gift alleged in the earlier suit is invalid as they failed to show how oral gift was made? OPP*

8. Order XIV CPC deals with framing of issues and a plain reading of Rule 1(1) of Order XIV would indicate that when a material proposition of fact or law is affirmed by one party and denied by the other, every such proposition shall form the subject of a distinct issue. In other words, whoever desires the court to pronounce a judgment as to a legal right dependent on the existence of facts which he asserts, must prove that those facts exist.

9. It is settled in law that primarily it is the obligation of the Court to frame the issues, and failure on the part of the Court may be remedied by either of the parties inviting attention of the Court to the need of framing such an issue, either by participating in the process of settlement of issues or by moving an application in terms of Rule 5 of Order XIV CPC, which reads as below:

“5. Power to amend, and strike out, issues.—(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

10. It is evident from a plain reading of Rule 5 of Order XIV CPC that Court is vested with wide discretionary power to amend the issues framed or frame additional issues at any time before passing a decree on such terms as it thinks fit, which may be necessary for determining the matter in

controversy between the parties. Pertinently, the Court in terms of sub-rule (2) of Rule 5 of Order XIV is also vested with the power, at any time before passing a decree, to strike out any issue that appears to it to be wrongly framed or introduced. [see **P.S. Shivakumar vs P.H. Subbarayappa**; 2017 SCC OnLine Kar 2263, **Abbott Healthcare Private Limited vs Raj Kumar Prasad & Anr**; 2018 SCC OnLine Del 6657, and **Sana Herbals Private Limited vs Mohsin Dehlvi**, 2022 SCC OnLine Del 4482]

11. However, if the present case is approached with the aforesaid propositions of law, it is evident that issues No. 9 & 14 regarding illegality or otherwise of collusive decree and the oral gift, are mixed questions of law and fact, thus are material issues arising out of the pleadings of the parties. Insofar as issue No. 13, regarding application of J&K Land Alienation Act, 1995 is concerned, the said issue, being legal in nature, could be treated as a preliminary issue and decided by the Trial court.
12. In view of the above, present petition, being devoid of merit, is dismissed. However, learned trial court is directed to treat issue No. 13 as a preliminary issue and decide the same, in accordance with law, after affording a reasonable opportunity of being heard to both the sides.
13. Disposed of in the manner indicated above.

(RAJESH SEKHRI)
JUDGE

Srinagar:
25.09.2026
Adil Ismail

❖ Whether the Judgment is Reportable?	Yes/No
❖ Whether the Judgment is Speaking?	Yes/No