

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

Reserved on: 05.06.2026

Pronounced on: 30.06.2026

Uploaded on: 01.07.2026

*Whether the operative part
or full judgment is
pronounced: **Full***

FAO No.49/2025

ABDUL REHMAN BHAT & ORS. ...PETITIONER(S)/APPELLANT

*Through: - Mr. Azhar-ul-Amin, Advocate, with
Mr. Shahid Ashraf & Mr. Bilal Ahmad,
Advocates.*

Vs.

SHAMAS-UD-DIN HURRAN & ORS. ...RESPONDENT(S)

Through: - Mr. Erfan Akbar, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellants/defendants have challenged order dated 16.10.2025 passed by the Court of Additional District Judge, Bandipora at Sumbal (hereinafter "the trial court"), whereby application of the respondents/plaintiffs for grant of interim injunction in terms of Order 39 Rules 1&2 of Civil Procedure Code has been allowed and the appellants/defendants have been restrained from causing interference with the suit land.

2) It seems that the respondents/plaintiffs have filed a suit for permanent prohibitory injunction against the
FAO No.49/2025

appellants/defendants before the learned trial court. It is case of the plaintiffs that they are absolute owners in possession of land falling under Survey No. 186/14 measuring 11 kanals and 13 marlas situated at Gund Balakh Hajin. According to the plaintiffs, the said land has been in their uninterrupted possession for several decades. It has been pleaded that the defendants in connivance with certain officials are attempting to forcibly interfere with the suit land by initiating construction of a road through the said land without any authority of law. It has been pleaded that the defendants have damaged the gate installed by the plaintiffs. According to the plaintiffs, the defendants despite existence of a road are now attempting to encroach upon their land and forcibly carve out a new road through it.

3) The appellants/defendants contested the suit by filing their written statement. In their written statement it has been submitted that the provisions contained in Section 10 of the CPC are attracted to the instant case because the issues involved in the suit are substantially identical to the issue involved in the suit already filed by legal representatives of the plaintiffs against the defendants before the Court of Munsiff, Sumbal. The defendants have denied the ownership and possession of the plaintiffs over the suit land. According to the defendants, there is a public

road in existence on spot which has been in continuous uninterrupted usage of the defendants and other inhabitants of the locality for the last more than thirty years. It has been submitted that the said public road has been repaired and renovated by various State agencies from time to time and that the plaintiffs are trying to encroach upon the said public road by installing a gate which was removed by the orders of SDM, Sumbal. It has been submitted that the suit of the plaintiffs is hit by the provisions of Section 41(ha) of the Specific Relief Act. According to the defendants, the road is being used by the public at large for ingress and egress towards their respective fields and that the plaintiffs have no title over the same. It has been submitted that even if the plaintiffs have any title over the land on which the road has been constructed, by their own omissions, the plaintiffs have lost their right on account of continuous usage of the public road by the defendants and other inhabitants of the locality.

4) The learned trial court initially passed an *exparte* interim injunction on 20.05.2025, whereby the appellants/defendants were temporarily restrained from causing any sort of interference with the suit land falling under survey No.186/14 measuring 11 kanals and 13 marlas situated at Gund Balakh Hajin. After hearing the

parties and after analyzing the pleadings on record, the learned trial court, vide impugned order dated 16.10.2025, allowed the application of the plaintiffs under Order 39 Rule 1 and 2 CPC and confirmed interim order dated 20.05.2025 passed by the said court.

5) The appellants have challenged the impugned order on the grounds that the same suffers from patent illegality and infirmity. It has been contended that impugned order dated 16.10.2025 has been obtained by the plaintiffs by suppressing material facts. It has been further contended that public road is in existence and it is in continuous use of public and, as such, inquiry with regard to the title of the land was an irrelevant factor for purpose of deciding application under Order 39 Rule 1 and 2 CPC. It has been contended that no injunction could have been granted in favour of the plaintiffs in view of the provisions contained in Section 41(ha) of the Specific Relief Act, as the subject matter of the suit is a public road which is being used by the defendants and other inhabitants of the locality. The appellants have also contended that the legal representatives of the plaintiffs have filed a similar suit against the defendants before the Court of learned Munsiff Sumbal and, as such, the trial court cannot proceed with the present suit.

6) I have heard the learned counsel for the parties. I have also gone through the memo of appeal and record of the trial court.

7) Before coming to the merits of the contentions raised by the appellants for challenging the impugned order passed by the learned trial court, it would be apt to understand the scope of an Appellate Court's jurisdiction to interfere with an order granting or refusing an interim injunction.

8) The Supreme Court has, in the case of **Seema Arshad Zaheer & Ors. vs. Municipal Corporation of Greater Mumbai and Ors.**, (2006) 5 SCC 282, while discussing the scope of jurisdiction of Appellate Court to interfere with an order of trial court granting or refusing an interim injunction, observed as under:

"The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case....

.....appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have

come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

9) From the foregoing legal position discussed by the Supreme Court, it is clear that scope of jurisdiction of Appellate Court to interfere with the discretion exercised by trial court is limited. The Appellate Court will step in to reverse or vary an interim injunction only if findings of fact recorded by the trial court are manifestly unreasonable, or based on no evidence, or that the trial court has failed to correctly apply the foundational tripartite test, that is establishing a prima facie case, demonstrating the balance of convenience, and proving irreparable injury. The Appellate Court can also interfere in an order of interim injunction passed by the trial court if the said court has ignored settled procedural laws or has considered irrelevant material while excluding the relevant material. However, the Appellate Court cannot substitute its own discretion for that of the trial court merely because it might have reached a different conclusion on the same facts. As long as the trial court's view is reasonably possible based on material on record, the Appellate Court ought not to interfere with the exercise of discretion by the trial court.

10) With the aforesaid legal position in mind, let us now advert to the facts of the present case. The plaintiffs claim

that they are owners in possession of land measuring 11 kanals and 13 marlas in Survey No. 186/14. They have placed on record of the trial court a copy of Khasra Girdawari which supports their claim. The land in respect of which the plaintiffs are seeking interim injunction against the defendants appears to be owned and possessed by the plaintiffs. Thus, there is a *prima facie* case in their favour.

11) The defendants claim that there is a road existing on spot which is being blocked by plaintiffs on the basis of their claim that the road is passing through their proprietary land. In this regard, the defendants have relied upon order dated 20.05.2025 issued by Sub Divisional Magistrate, Sumbal, whereby Tehsildar, Hajin, and SHO, Hajin, have been directed to restore the road to its original form, ensuring all obstructions and encroachments are removed. They are also relying upon communication dated 12.01.2026 addressed by Executive Engineer, R&B Division, Sumbal to SDM, Sumbal, whereby it has been brought to the notice of the SDM that the road has been obstructed by the persons claiming to be the owner of the land on which the road is being constructed. The appellants have also placed on record notice dated 20.02.2026 issued by Assistant Executive Engineer, PWD R&B, Sub Division

FAO No.49/2025

Hajin to one Nazir Ahmed Dar, who, according to the appellants, happens to be the son of respondent No. 3. Vide the said notice, Shri Nazir Ahmed Dar has been asked to remove encroachment and restore the road to its original condition.

12) When we analyze the documents placed on record by both the parties, it appears that while the documents placed on record by the plaintiffs, *prima facie*, demonstrate that they are owners in possession of the suit land, the documents on which defendants have placed reliance, do not go on to rebut the aforesaid position. These documents do not in any manner support the assertion of the defendants that they have been using the aforesaid land of the plaintiffs for ingress and egress to their fields for any length of time. What these documents tend to show is that there is an attempt on the part of the officials of the State to construct a road, but it is not clear whether the said road is being constructed on the land owned and possessed by the plaintiffs or it is being constructed on land other than the suit land.

13) Even if it is assumed that the officials of the State are attempting to construct the road on the land owned and possessed by them, the same cannot be done without adopting due course of law. Right to Property is a

constitutional right and it cannot be taken away except in due course of law. Once it is shown that the plaintiffs are owners in possession of the suit land, they have a right to protect their said right unless those who intend to take over their land for the purpose of construction of the road adopt due course of law.

14) There is yet another aspect of the matter which needs to be noticed. In the suit filed before the Munsiff, Sumbal, relating to the construction of road in the same area, the learned Munsiff had appointed Tehsildar, Hajin, as the Commissioner to visit the spot and submit his report. The Commissioner in his report dated 10.07.2025, has categorically reported that Survey Nos.218/16, 180/20, 17 and 19 are proprietary land as per revenue record. He has also reported that there is a 10 feet wide road on spot constructed by R&B Department and the said road is kacha with gravel and stones at some places. He has further reported that on spot no construction is being undertaken and that because the land in question is proprietary, the land owners on their own can use any other ingress or egress which seems fit to them. Thus, the Commissioner has suggested that the land owners, for ingress and egress to their land, can use alternate route because the land in question is proprietary land. This supports the claim of the

plaintiffs that the land on which defendants are trying to construct road with the help of the State officials is under their ownership and possession.

15) The learned trial court has, while passing the impugned order, meticulously analyzed the documents on record and reached a conclusion that there is a *prima facie* case in favour of the plaintiffs. The said conclusion arrived at by the learned trial court can, by no stretch of reasoning, be termed as either perverse or based upon irrelevant materials.

16) It has been contended by learned counsel for the appellants that because the interim injunction passed by the learned trial court amounts to stalling construction of a public road, as such, the same is not sustainable in law. He has contended that individual interest has to yield to the public interest. However, this aspect of the matter has not been considered by the learned trial court.

17) In the above context, it is to be noted that the plaintiffs have sought injunction against the defendants who are private individuals and they are not seeking an injunction against the State. Interest of the defendants cannot be given preference over the interest of the plaintiffs, particularly when the defendants have not brought on

record anything to rebut the claim of the plaintiffs that they are owners in possession of the suit land, which is supported by the revenue extracts or that the pathway through the land of the plaintiffs is under their use for any length of time.

18) A perusal of the impugned order would reveal that it has been made clear by the learned trial court that passing of the interim injunction would not prevent the Government or any other competent authority from acquiring the suit land for public purposes and it has also been clarified that the said order shall have no binding effect upon the Government or its executing agencies acting under due legal authority, thereby safeguarding the rights of the Government agencies to take action in accordance with law.

19) For the foregoing reasons, I do not find any ground to interfere with the impugned order passed by the learned trial court. The appeal lacks merit and is ***dismissed*** accordingly.

20) The trial court record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

SRINAGAR

30.06.2026

“Bhat Altaf-Secretary”

Whether the **judgment** is reportable: **YES/NO**