

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

Case No.:- MA No. 38/2019
CM No. 2067/2019 [1/2019].

1. Badri Nath, age 73 years, S/o Mst. Achri W/o Balia, R/o Village Rehmbal Tehsil and Distt. Udhampur.
2. Mst. Anuradha Verma, age 34 years, D/o Hans Raj R/o Village Jib, Tehsil and District Udhampur.
3. Hans Raj, age 66 years S/o Faquir Chand, R/o Village Chib, Tehsil and District Udhampur.
4. Mohan Lal S/o Sh. Amar Nath, R/o Village Kothi-Garnai tehsil and Distt. Udhampur.

.....Appellants(s)

Through: Mr. A.P. Singh, Advocate.

Vs

1. Parma Nand S/o Kirpu
 2. Naresh Kumar
 3. Vineet Kumar
- Sons of Late Sh. Shanker Dass
4. Mst. Ram Pyari W/o Late Sh. Shanker Dass
- All residents of village Rehmbal (Morha-Rehni), Tehsil and District Udhampur.

..... Respondent(s)

Through: Mr. Anil Khajuria, Advocate.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
15.01.2026

1. Heard the learned counsel for both sides.
2. The four appellants herein came to be named as the defendants in a civil suit filed by the four respondents herein.
3. The suit so filed by the respondents is asking for a decree of permanent prohibitory injunction read with a mandatory injunction thereby seeking restraining of the appellants from

causing any interference or raising any construction upon two marlas of Shamlat Deh land (Taraf Rehn) born out of khasra No. 1162 situated in village Rehmbal (Morha Rehni) said to be located adjoining eastern side of the respondents' proprietary land comprising khasra No. 1183 and also for mandatory injunction requiring the appellants herein to demolish the construction made upon the said two marlas of suit land comprised in khasra No. 1162.

4. The suit came to be instituted on 08.01.2015.
5. Before filing of the said suit, the parties (appellants and respondents) had already previously suffered a long drawn round of litigation vis-à-vis each other with the respondents being the initiators of said previous litigation.
6. The appellants, as defendants No. 1 to 4 in the suit, came forward with a joint written statement meeting and objecting the averments made in the plaint both on factual side as well as on legal side, and also raising preliminary objection with respect to the maintainability of the suit.
7. In the context of preliminary objection, the appellants referred to section 118(E) of the Jammu and Kashmir Land Revenue Act, Svt., 1996 concerning partition of shamlat deh land pleading that the appellants are in possession of only 11 marlas out of said shamlat khasra No. 1162 and as such their possession qua said 11 marlas of land is protected by the

provisions of the Jammu and Kashmir Land Revenue Act, Svt., 1996.

8. In this regard, the appellants also made a reference in their written statement about an adjudication of a civil revision (CR) No. 32/2014 done by this Court which civil revision was filed by the appellants challenging an order dated 03.09.2014 passed by the court of learned Munsiff, Udhampur in the earlier round of litigation initiated by the respondents.
9. This earlier round of litigation was referring to the alleged acts of interference on the part of the appellants with respect to khasra No. 1183 owned by the respondents whereas in the Commissioner's report submitted by the Revenue Officials therein it had come to fore that the proprietary khasra No. 1183 of the respondents was not in any way being wronged by the appellants whereas the state of things have happened qua khasra No. 1162 which is admittedly a shamlat khasra number.
10. The appellant No. 1 is also similarly placed as that of the respondents as being the original land holder of village Rehmbal and purportedly having his share/stake in the shamlat deh land.
11. The appellant No. 1 executed a sale deed in favour of the appellant No. 2 for two marlas of land out of his proprietary khasra No. 1576 but instead the appellant No. 2, under the

cover of sale deed, came to station herself in terms of her possession qua khasra No. 1162 that being shamlat deh land.

12. It is in this backdrop of facts and circumstances that the respondents came forward with the institution of the suit in reference.
13. In the written statement, the appellants did not expressly invoke Order VII Rule 11 (1) (d) of the Jammu and Kashmir Civil Procedure Code, Svt. 1977.
14. Given the tone and tenor of the preliminary objections No. 1 and 2 raised in the written statement in response to the plaint, Order VII Rule 11 (d) of the Jammu and Kashmir Civil Procedure Code, Svt. 1977 was not forthcoming.
15. The trial court of Munsiff (District Judicial Mobile Magistrate) Udhampur came to respond to the application filed under Order VII Rule 11 of the Jammu and Kashmir Civil Procedure Code, Svt. 1977 by the appellants on 21.05.2015 after submission of written statement on 13.02.2015 in which application the appellants came forward with their own version of facts to say that the suit filed by the respondents deserves to be rejected by invoking Order VII Rule 11 of the Jammu and Kashmir Civil Procedure Code, Svt. 1977.
16. The application so filed by the appellants is longer in terms of its averments in comparison to the length of written statement filed by the appellants.

17. The trial court of Munsiff, Udhampur by a one para reasoning, which is reproduced hereunder, came to allow the application and aborted the suit of the respondents by rejecting the plaint. The operative part of an order dated **23.11.2015** is as under:

“Considered the arguments of both sides, gone through the material on the file and documents produced by the Ld. Counsel for the plaintiffs/applicants. It appears from the pleadings that plaintiffs very cleverly and mischievously has twisted the story and it is like old things in new bag and has dragged the defendants into the unnecessary litigation. Moreover Hon’ble High Court had already returned findings regarding the nature of land which is the subject matter of suit i.e. Shamlat Deh land in which the inhabitants of village claim on prorata basis and plaintiffs are claiming rights over to the exclusion of others. The plaintiffs cannot be representative of all the villagers and as such type of litigation should be curbed.

18. The rejection of the plaint which came to take place by virtue of said order dated **23.11.2015** amounted to a decree and as such came to be appealed against under section 96 of Jammu and Kashmir Code of Civil Procedure Svt., 1977 by the respondents before the court of learned Principal District Judge, Udhampur on file No. **45/Appeal** which appeal came to be disposed of vide an order dated **07.05.2016** in favour of the respondents by upsetting the order of rejection of the plaint and directing the trial of the suit to take place.

19. The appellate court, in terms of its order dated **07.05.2016**, came up with a categoric observation that by looking at the plaint, it is not at all forthcoming that the suit is barred by any law or that it is not disclosing a cause of action.
20. The appellate court, thus, applied the essence of Order VII Rule 11 of the Jammu and Kashmir Civil Procedure Code, Svt. 1977 as to whether the plaint itself exhibits its deficiency/lacuna/infirmity coming within the hit of rule 11 of Order VII of the Jammu and Kashmir Code of Civil Procedure Svt., 1977 and found that the plaint does not fall within the scope of suffering rejection.
21. It is against the aforesaid backdrop that the present appeal as being a civil second appeal though not diarised as such but as miscellaneous appeal has been preferred by the aggrieved defendants.
22. This Court, while dealing with this civil second appeal filed by the appellants feeling aggrieved of lease of life granted to the civil suit by the appellate court of learned Principal District Judge, Udhampur, has to stay self conscious that any observation made in the present matter from its end when the facts are yet to be tried and tested out of a trial borne out of the suit must not prejudice the cause of either side to an irreversible effect to the extent of non-suiting either of two

sides and therefore, this Court would stay away from making any such observation while adjudicating this matter.

23. Suffice to say from the reading of the plaint that the 1st appellate court of learned Principal District Judge, Udhampur came to a reasonable view that ex facie the plaint does not invite self-rejection. This aspect is evident from the very misconceived reasoning given by the trial court itself and reasoning is that the respondents/plaintiffs very cleverly and mischievously twisted the story and thus, presented a case like old things in a new bag thereby dragging the appellants into an unnecessary litigation. In addition, the trial court also came to question the locus of the respondents/ plaintiffs as to how they came to be the representative of all villagers to come up with the litigation in relation to Shamlat Deh (proprietary common land) meaning thereby even Order 1 Rule 8 of the Jammu and Kashmir Civil Procedure Code, Svt. 1977 was pressed into decision making by the trial court in rejecting the plaint.

24. Thus, the trial court had erred itself, factually and legally, by creating ad-mixture of Order 1 Rule 8 of the Jammu and Kashmir Civil Procedure Code, Svt. 1977 and also purportedly censuring the conduct of the respondents/appellants in coming up with the suit so as to brand them bringing a suit by metaphorically saying old wine in a new bottle. Surely, that is

not the scope of Order 7 Rule 11 of the Jammu and Kashmir Civil Procedure Code, Svt. 1977 to be applied by any trial court.

25. Therefore, the appellate court of learned Principal District Judge, Udhampur did not go wrong in upsetting the order of the trial court and reviving the suit back for its trial.
26. In view of the aforesaid, this Court finds that the present civil second appeal is misconceived and deserves to be dismissed. The appeal is accordingly dismissed along with connected application(s).
27. Let the trial court carry on with the trial of the case wherein both the sides shall be well within their respective right to produce their respective contest and also the preliminary objections raised in the context of Section 118(E) of the Jammu and Kashmir Land Revenue Act, Svt., 1996 whereupon the trial court would be well within its right and discretion to act in accordance with the procedure envisaged under the Jammu and Kashmir Code of Civil Procedure Svt., 1977 as the suit stood instituted under the said Code and to frame issues of fact and law in the case, and in case any issue of law is to be reckoned as preliminary issue then the adjudication can take place on the said issue of law with respect to maintainability of the suit.

28. Nothing observed by this court herein shall, by any stretch of reasoning, be taken as an observation on merits of the respective case of the parties to the civil suit.
29. Disposed of accordingly.
30. The detailed order is following the order dated 01.07.2024 vide which the appeal was ordered to be dismissed as is hereby being done.

(RAHUL BHARTI)
JUDGE

JAMMU
15.01.2026
Naresh/Secy.

