

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

Reserved on: 24.07.2025
Pronounced on: 14.08.2025

RFA No.20/2020

MAHJUBA AKHTER & ORS.... APPELLANT(S)

*Through: - Mr. Salih Pirzada, Advocate, with
Mr. Aabid, Advocate.*

Vs.

SYED MUKHTAR & ORS. ...RESPONDENT(S)

Through: - Mr. Shariq J. Reyaz, Advocate.

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

JUDGMENT

1) Through the medium of present appeal, the appellants have challenged judgment and decree dated 19.10.2020 passed by the learned Principal District Judge, Srinagar.

2) It appears that the predecessor-in-interest of the appellants/plaintiffs filed a suit before the learned District Judge, Srinagar (hereinafter referred to as "the trial court") seeking partition of joint property by metes and bounds with a prayer for separate possession. It was pleaded that father of the original plaintiff and defendants No.1 to 3 had died on 22.11.2002 leaving behind the following immovable properties:

- i. Land measuring 6 kanals 15 marlas 183 feet covered under Khasra Nos.3431/757, 3432/757, 3434/757, situated at Riyazat Teng, Khanyar Srinagar.

- ii. Two storeyed residential house with attic along with land underneath and appurtenant thereto covered under Survey Nos.3432/757 situated at Riyazat Teng, Khanyar Srinagar.

3) It was further pleaded that after the death of the father of the plaintiffs and defendants No.1 to 3, the aforesaid properties devolved upon them in the ratio as provided under Islamic law. It was pleaded that the plaintiffs repeatedly requested defendants No.1 to 3 to partition the aforesaid properties by metes and bounds but they avoided to do so. It was further pleaded by the plaintiffs that during pendency of the suit, they came to know that defendants No.1 to 3 had sold a double storeyed house along with land appurtenant and beneath measuring 01 kanal, 03 marlas and 53 sq.ft. under Khasra No.3432/757 to defendants No.4 to 6 by virtue of an agreement to sell dated 01.07.2004, pursuant where to, possession of the said property was handed over to the said defendants.

4) It was pleaded that defendants No.1 to 3, in order to defeat the rights and interests of the plaintiffs in respect of the joint property, have executed the aforesaid agreement to sell in favour of defendants No.4 to 6. It was contended that in view of the provisions contained in the J&K Transfer of Property Act, no rights have been conferred upon

defendants No.4 to 6 in respect of the said portion of the joint property and that the agreement to sell is not sustainable in law.

5) Defendants No.1 to 3 contested the suit by filing their written statement. In the written statement it was contended by defendants No.1 to 3 that the suit property is their exclusive property except to the extent of double storeyed house along with land measuring 1 kanal 3 marlas and 53 sq.ft. in Khasra No.3432/757, which has been sold to defendants No.4 to 6. It was pleaded that the suit property was owned by grandfather of the plaintiffs and defendants No.1 to 3, who had two sons including the father of plaintiffs and defendants No.1 to 3. It was also pleaded that out of the first marriage contracted by father of the parties with Mst. Hafeeza, the plaintiffs were born whereas out of his second wedlock with Mst. Haleema, defendants No.1 to 3 were born. It was further pleaded that grandfather of the parties, during his lifetime, had gifted 02 kanals 11 marlas of land under Khasra No.748 Khata No.7 situated at Riyazat Teng Khanyar, Srinagar, to the children of Mst. Hafeeza i.e. the plaintiffs, vide gift deed executed on 4th Haar, 2001 (Bikrami). After the death of grandfather of the parties, the father of the plaintiffs and defendants No.1 to 3 gifted 03 kanals of land under Khasra No.757 to his

second wife, Mst. Haleema, vide gift deed dated 01.04.1978. Thereafter Mst. Haleema gifted 01 kanal of land from the aforesaid land to defendant No.1 in terms of gift deed dated 18.05.1982 registered on 02.08.1982.

6) Defendants No.1 to 3 further pleaded that Mst. Haleema constructed a double storeyed house on her remaining 02 kanals of land after obtaining permission from Srinagar Municipality. Thereafter father of the parties sold 01 kanal of land in Khasra No.3434 to Mst. Zamrooda, the wife of defendant No.1, vide sale deed dated 19.04.1989. According to defendants No.1 to 3, defendant No.1 and his wife, Mst. Zamrooda, constructed a house on the land measuring 01 kanal which was purchased by Mst. Zamrooda.

7) It was further pleaded by defendants No.1 to 3 that their mother, Mst. Haleema, died on 06.10.2002 and her property in the form of 02 kanals of land and a double storeyed house constructed thereon has devolved upon them and thereafter they sold the said double storeyed house along with land measuring 01 kanal 03 marlas and 53 sq.ft. to defendants No.4 to 6 vide agreement to sell dated 01.07.2004. It was further pleaded that father of the parties had sold 01 kanal 04 marlas of land in Khasra No.2719/799 to Ghulam Mohammad, Ali Mohammad and

Ghulam Rasool sons of Ramzan Bhat and another 01 kanal 14 marlas and 94 sq.ft. of land under Khasra No.2720/2054 to one Noor Shah S/o Qadir Shah. On the basis of these assertions, it has been contended that the plaintiffs are not entitled to any share from the properties referred to in the plaint.

8) On the basis of the pleadings of the parties, the learned trial court framed the following issues:

1. *Whether the suit property mentioned in para 2 of the plaint is joint and un-partitioned between the parties? (OPP)*
2. *Upon proof of issue No.1, whether the parties are entitled to the suit property in accordance with the ratio mentioned in para 3 of the plaint? (OPP)*
3. *Whether the defendants have been delaying the partition of the suit property as a result of which the instant suit has been filed? (OPP)*
4. *Whether the grandfather of the plaintiffs, out of the ancestral property has already given the plaintiffs their shares and as such the plaintiffs are stopped from claiming partition? (OPD)*
5. *Whether the defendants are in exclusive possession and occupation of the suit property and if so what is the effect thereof upon the suit.*
6. *Whether the defendants have sold two storeyed house as mentioned in para 9 of preliminary objections and the plaint is liable to be dismissed for non-impleadment of the buyers? (OPD)*
7. *Whether the grandfather of the defendants had transferred land measuring 2 kanals and 11 Marlas falling under Khasra No. 748 in favour of the plaintiffs by virtue of gift deed executed on 4 Haar, 2001 Bikrami? (OPD)*
8. *Whether land measuring 3 kanals falling under Khasra No. 757 has been gifted by the father of the parties in favour of his 2nd wife (mother of defendants) and whether land measuring 1 kanal has been sold by him in favour of wife of defendant No. 1? (OPD)*

9. *Whether Mst. Haleema (mother of defendants) has gifted 1 kanal of land in favour of defendant No.1 from the land gifted to her by her husband, as per gift deed executed on 18/05/2003 if so, what is its effect, thereof, upon the suit? (OPD)*
10. *Whether upon proof of issues 8 and 9, the defendants are in exclusive lawful ownership and possession of land measuring 4 kanals? (OPD)*
11. *Whether the suit has not been properly valued as the court fee is insufficiently paid, if so, what is the proper valuation of the suit and the court fee to be paid upon the plaint? (OPD)*
12. *Whether the plaint is liable to be rejected in terms of Order VII Rule 11 CPC? (OPD)*
13. *Whether the suit property has not been elaborated in the plaint in accordance with Order VII Rule 3 CPC and is thereby liable to be dismissed? (OPD)*
- 13-A. *Whether the defendants 1 to 4 have sold double storeyed house along with land measuring 1 kanal, 3 marlas and 53 ft² under survey No. 3431/575 to defendants 5 and 6 pursuant of the agreement to sell to the knowledge of the plaintiff? (OPD)*
- 13-B. *In case issue No.13-A is proved in affirmative whether the possession of the suit property has been delivered to the defendants 5 and 6 to the knowledge of the plaintiff? (OPD)*
- 13-C. *Whether by the agreement to sell the ownership rights can be transferred and the possession could be claimed under the provisions of J&K Transfer of Property Act? (OPP)*

9) After framing of the issues, the parties went into trial and the plaintiffs examined plaintiff Syed Mohammad Sharief Qadiri and Syed Irshad Ahmad Qadiri as witnesses in support of their case whereas defendants 1 to 3 examined defendant No.1 Syed Mukhtar Ahamd, defendant No.2 Syed Muzaffar Qadiri and DWs Fayaz Ahmad and Adil Muzafar Haqani as witnesses in support of their case. Besides this, defendant No.5 examined himself as a witness

and also examined DWs Sajad Ahmad Wani and Firdous Ahmad Wani as witnesses in support of his case.

10) The learned trial court, after hearing the parties and after analysing the evidence on record, dismissed the suit of the plaintiffs. While deciding issue No.1, the learned trial court observed that the plaintiffs have not been able to prove their case on the basis of credible evidence. It has also been observed that the plaintiffs have not described the suit land so as to clearly identify the same.

11) The appellants have challenged the impugned judgment and decree passed by the learned trial court, primarily, on the grounds that defendants No.1 to 3 have not led cogent and convincing evidence to show that 04 kanals of land out of the suit land has been gifted/sold by the father of the parties in their favour as the documents placed on record by the said defendants in this regard have not been proved. It has been contended that mere tendering of gift deed and the sale deed by defendants No.1 to 3 along with their written statement does not amount to proof of these documents, particularly when the appellants/plaintiffs had denied the validity of the said documents. It has been further contended that even otherwise, the learned trial court has not rendered any finding as regards the fate of balance 02 kanals 15 marlas

and 183 sq.ft. of the suit land as also with regard to the share of the suit land which had reverted to the father of the plaintiffs and defendants No.1 to 3 after the death of his second wife, Mst. Haleema, on 06.10.2002, as the father of the parties had died post the death of Mst. Haleema.

12) I have heard learned counsel for the parties, perused the grounds of appeal and impugned judgment passed by the learned trial court and also perused record of the trial court.

13) So far as the claim of the plaintiffs is concerned, according to them the joint property of the parties comprises of land measuring 06 kanals, 15 marlas and 183 sq.ft. covered under Khasra No.3431/757, 3432/757, 3434/757 situated at Riyazat Teng Khanyar, Srinagar and besides this, there is a two storeyed residential house with attic along with land underneath and appurtenant thereto covered under Survey No.3432/757 situated at Riyazat Teng Khanyar, Srinagar. The defendants, in their written statement, have not disputed the fact that the aforesaid properties belonged to the father of the plaintiffs and defendants No.1 to 3. However, their defence is that the father of the parties gifted 03 kanals of land in Khasra

No.757 to his second wife, Mst. Haleema, who happens to be the mother of defendants No.1 to 3, vide gift deed dated 01.04.1978. Besides this, father of the plaintiffs and defendants No.1 to 3 transferred 01 kanal of land covered under Khasra No.3434 to Zamrooda, wife of defendant No.1, vide sale deed dated 19.04.1989. Thus, defendants No.1 to 3 have accounted for 04 kanals of land out of the suit land which is measuring 06 kanals 15 marlas and 183 sq.ft.

14) The question whether defendants No.1 to 3 have been able to establish and account for aforesaid 04 kanals of land out of the suit land would be determined at an appropriate stage. However, one thing is clear that defendants No.1 to 3 have not stated anything about the balance land measuring 02 kanals 15 marlas and 183 sq.ft. out of the suit land nor have explained the fate of the suit land which was in the hands of Mst. Haleema after her death, as according to the plaintiff a certain share of said land had reverted to the father of the petitioner, who was alive at the time of death of Mst. Haleema.

15) Though defendants No.1 to 3 have stated that grandfather of the parties had gifted 02 kanals and 11 marlas of land to the plaintiffs after the death of their

mother Hafeeza, yet the said land is stated to be existing in Khasra No.748 and not in suit Khasra numbers. Defendants No.1 to 3 have also stated that the father of the parties had sold 01 kanal 04 marlas of land to Ghulam Mohammad etc. and 01 kanal 14 marlas and 94 sq.ft of land to one Noor Shah, yet the land which is subject matter of these two sale transactions bear different Khasra numbers. Therefore, from the pleadings of the parties, it is clear that no account has been given, so far as land measuring 02 kanals 15 marlas and 183 sq.ft. out of the suit land is concerned, by defendants No.1 to 3, meaning thereby that at least the said portion of the suit land is available for partition.

16) The learned trial court, while deciding issue No.1, has thrown out the case of the plaintiffs as a whole by holding that the plaintiffs have not properly described the suit land. I am afraid the said finding of the learned trial court is not in accordance with law for the reason that the plaintiffs have clearly given the survey numbers and the location of the whole of the suit land.

17) In terms of Order VII Rule 3 of CPC, when subject matter of the suit is immovable property, the plaint has to contain the description of the property sufficient to identify it and in case such property can be identified by

boundaries or numbers in a record of settlement or survey, the plaint has to specify such numbers or boundaries. In the present case, the plaintiffs have clearly described the survey numbers of the suit land. Therefore, it was not open to the learned trial court to throw out whole case of the plaintiffs on the ground that proper description of the suit land has not been given by them.

18) The question that arises for determination is that even if case of defendants No.1 to 3 is accepted wherein they have given account for 04 kanals of the suit land, still then there is balance land out of the suit land available for partition. However, before undertaking exercise of deciding the mode and manner of partition of the said portion of the suit property, it would be appropriate to get whole of the suit land demarcated and to obtain a report from the concerned revenue authorities regarding the position obtaining on spot.

19) In view of the above, it is directed that the Deputy Commissioner, Srinagar, shall depute the concerned Tehsildar to undertake demarcation of the suit land i.e. land measuring 06 kanals 15 marlas and 183 sq.ft. covered under Khasra Nos.3431/757, 3432/757, 3434/757 situated at Riyazat Teng, Khanyar, Srinagar, and submit his report relating to demarcation as also the structures/features

existing on the land in question. The report in this regard shall be furnished before this Court by the Deputy Commissioner, Srinagar, within a period of one month from the date a copy of this order is served upon him.

20) After obtaining the report as aforesaid, the matter shall be taken up for further consideration on 06.10.2025.

(Sanjay Dhar)
Judge

Srinagar,
14 .08.2025
“Bhat Altaf-Secy”

Whether the order is speaking: **Yes**

Whether the order is reportable: **No**

