Serial No.10

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CM(M) No. 195/2023
CM No. 6190/2023

Date of pronouncement:- 03.11.2026
Uploaded on :- 12.11.2026

01. Girdhari Lal S/o Late Dharam Chand
R/o Village Supwal, Tehsil Vijaypur
District Samba.

02. Tirath Ram S/o Late Dharma Chand
R/o Village Supwal, Tehsil Vijaypur
District Samba. …..Appellant(s)/Petitioner(s)

Through: Mr. D.K. Khajuria, Advocate.

Vs

Brij Lal S/o Late Govind Ram
R/o Supwal, Tehsil Vijaypur, District Samba ….. Respondent(s)

Through: Mr. Dhiraj Chowdhary, Advocate.

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

ORDER
03.11.2026

01. The petitioners, by invoking the supervisory jurisdiction of this Court, have called in question the legality and propriety of the order dated 16.06.2023 passed by the Additional District Judge, Samba (hereinafter referred to as the *Appellate Court*) in an appeal titled ***"Brij Lal v. Girdhari Lal and Another",*** whereby the Appellate Court, while setting aside the order dated 02.03.2023 passed by the Trial Court, modified the interim protection granted in favour of the petitioners and directed the parties to maintain status quo with respect to the suit land.

02. The principal grievance projected by the petitioners is that the Appellate Court has failed to appreciate the material available on record, particularly the revenue entries reflecting the possession of the petitioners and their predecessor-in-interest over the land measuring 07 Kanals and 06 Marlas, falling under Khasra No. 419, situated at Village Supwal, Tehsil Vijaypur, District Samba. It is contended that the land is recorded as Shamlat Deh and that the revenue records disclose the cultivating possession of Dharam Chand, predecessor-in-interest of the petitioners, over a portion thereof. According to the petitioners, the Appellate Court, without properly appreciating the distinction between the rival claims and the material bearing upon possession, has erroneously substituted the order of injunction passed by the Trial Court with a direction to maintain status quo. It is further alleged that the respondent, taking undue advantage of the impugned order, forcibly interfered with and assumed possession of the suit land. The petitioners, therefore, seek interference by this Court for correction of the alleged jurisdictional and legal errors committed by the Appellate Court.

03. The facts necessary for adjudication of the controversy, briefly stated, are that the plaintiff instituted a suit for permanent prohibitory injunction before the Trial Court in respect of land measuring 07 Kanals and 06 Marlas, comprising Khasra No. 419, situated at Village Supwal, Tehsil Vijaypur, District Samba. The plaintiff asserted that he and the proforma defendant were in exclusive physical possession of the suit land, having cultivated fodder crops over a portion thereof, while the remaining portion was lying vacant. It was pleaded that their father, Dharam Chand, had

been holding the land in ownership and cultivating possession and that, upon his demise, the plaintiff and the proforma defendant succeeded to his rights and continued in possession thereof.

04. The plaintiff further pleaded that the contesting defendant had no right, title or interest in the suit land and was attempting to interfere with the peaceful possession of the plaintiff and the proforma defendant without any lawful justification. Apprehending forcible interference and dispossession, the plaintiff sought a decree of permanent prohibitory injunction, besides interim protection under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

05. The contesting defendant resisted the suit by filing a written statement, wherein the claim of exclusive possession set up by the plaintiff was specifically denied. It was asserted that the defendant was a co-sharer in the suit land and, therefore, no injunction could be granted against him in the manner prayed for. The defendant also raised objections regarding the maintainability of the suit, non-joinder of necessary parties and jurisdiction of the Civil Court, having regard to the agricultural nature of the land. Reference was additionally made to another suit titled ***"Brij Lal v. Vinay Sharma"***, concerning land falling under the same Khasra number, stated to be pending before another Court at Samba, wherein an ex parte interim order had allegedly been passed.

06. It also emerges from the record that another suit titled ***"Madan Lal v. Vinay Sharma"*** had been instituted, wherein Brij Lal, Khem Raj, Sham Krishan and Sunil Sharma were arrayed as proforma defendants. The existence of these proceedings was relied upon by the contesting

defendant to question the maintainability of the suit and the entitlement of the plaintiff to interim relief.

07. Upon consideration of the pleadings, revenue records and other material placed before it, the Trial Court, by order dated 02.03.2023, allowed the application under Order XXXIX Rules 1 and 2 CPC and restrained the contesting defendant, Brij Lal, from interfering with the possession of the plaintiff over the suit land, forcibly occupying the same or dispossessing the plaintiff therefrom, except in accordance with law.

08. Aggrieved by the aforesaid order, the contesting defendant preferred an appeal before the Additional District Judge, Samba. The Appellate Court, by the impugned order dated 16.06.2023, proceeded to examine the revenue entries, including Mutation Nos. 249 and 480. It noticed that Mutation No. 249, relating to the estate of Ganju Ram, had been attested in favour of Girdhari Lal, Des Raj, Mulakh Raj and Chuni Lal, sons of Ganju Ram, whereas Mutation No. 480, relating to the estate of Govind Ram, had been attested in favour of Sham Lal, Brij Lal, Sunil Sharma, Tripta Devi and Sarika Sharma. On the basis of its appreciation of the revenue record and the rival claims of co-sharer ship, the Appellate Court concluded that the restraint imposed by the Trial Court would occasion greater prejudice and irreparable injury to the contesting defendant. It accordingly modified the order of the Trial Court and directed the parties to maintain status quo with respect to the suit land.

09. Learned counsel appearing for the petitioners has assailed the impugned order primarily on the ground that the Appellate Court has proceeded upon an erroneous appreciation of the identity of the persons reflected in

the revenue records. It is submitted that the Appellate Court failed to distinguish between two individuals bearing the name Girdhari Lal, one being the son of Ganju Ram and the other being the son of Dharam Chand. The plaintiff, Girdhari Lal, is the son of Dharam Chand, whereas Girdhari Lal, son of Ganju Ram, belonged to a different branch of the family and is stated to have since died. According to learned counsel, the failure to appreciate this material distinction has substantially vitiated the reasoning adopted by the Appellate Court.

10. Learned counsel further submits that the petitioners are the sons of Dharam Chand, a fact which, according to him, is also borne out from the stand taken by the contesting defendant before the Trial Court. It is urged that the revenue entries, when read in their proper perspective and in conjunction with the genealogy of the parties, prima facie support the possession asserted by the petitioners. The Appellate Court, it is contended, has failed to identify any perversity, illegality or material irregularity in the exercise of discretion by the Trial Court warranting appellate interference. The impugned order is, therefore, sought to be set aside.

11. *Per contra*, learned counsel for the respondent has supported the order passed by the Appellate Court. It is contended that the dispute essentially relates to the respective shares and possession of the parties in Shamlat Deh land and that the parties claim through co-sharers having interests therein. It is argued that an injunction in favour of one co-sharer, operating to the exclusion of another, could not have been granted without proper adjudication of their respective rights. Learned counsel has further

submitted that the Civil Court's jurisdiction itself was under challenge in view of the agricultural character of the land and the applicable statutory provisions. According to him, the Appellate Court was justified in modifying the injunction and directing maintenance of status quo so as to preserve the subject matter of the litigation.

12. Heard learned counsel for the parties and perused the material available on record.

13. The controversy requiring consideration is whether, in the facts and circumstances of the case, the Appellate Court was justified in interfering with the discretionary order of temporary injunction passed by the Trial Court and substituting the same with a direction to maintain status quo. The determination of this question necessarily requires examination of the prima facie material concerning possession, the competing claims of co-sharer ship and the principles governing appellate interference with orders passed under Order XXXIX Rules 1 and 2 CPC.

14. At the outset, it deserves to be noticed that the plaintiff, Girdhari Lal, claims through his father, Dharam Chand, and is stated to be approximately 86 years of age, while his brother, Tirath Ram, is stated to be approximately 76 years of age. The contesting defendant, Brij Lal, on the other hand, claims through his father, late Govind Ram. The material placed on record indicates that the parties trace their respective claims through different branches of a common family. The distinction assumes significance in view of the fact that the revenue records also refer to another person bearing the name Girdhari Lal, who was the son of Ganju Ram.

15. A perusal of the revenue extracts reveals that Khasra No. 419 comprises land measuring 07 Kanals and 06 Marlas, reflected in two portions measuring 05 Kanals and 06 Marlas and 02 Kanals, respectively. The revenue entries record the cultivating possession of a person named Girdhari Lal over the former portion and that of Dharam Chand, shareholder, over the latter portion. The identity of the person named Girdhari Lal in the revenue record, particularly in the light of the existence of two persons bearing the same name, was thus a material circumstance requiring careful consideration. The Appellate Court was obliged to examine the entries in conjunction with the genealogy and the other material available on record, rather than treating the similarity of names as sufficient to determine the competing claims.

16. The Trial Court, while considering the application for temporary injunction, had noticed the nature of the land as Shamlat Deh and the rival claims of the parties concerning their respective shares and possession. It also took note of the fact that Dharam Chand, Govind Ram and Vishwanath, son of Sant Ram alias Santu, were stated to have held proprietary interests in Village Supwal and, consequently, claimed corresponding interests in the Shamlat Deh land. The plaintiff's case was that the respective predecessors-in-interest had been enjoying distinct portions of the land and that their successors continued to assert possession through them.

17. The plaintiff had further asserted that the arrangement relating to the respective shares of the predecessors-in-interest had resulted in separate enjoyment of portions of the suit land. According to the plaintiff, Dharam

Chand had been allotted or was otherwise enjoying one-half share, while the remaining share was associated with the branches represented by Govind Ram and Vishwanath. Upon the demise of the respective predecessors, their successors stepped into their shoes. These assertions, however, constitute matters requiring adjudication upon evidence and cannot, at the interlocutory stage, be treated as conclusively establishing title or the precise extent of the respective shares.

18. What assumes significance at the present stage is that the Trial Court, upon consideration of the revenue record and the material placed before it, recorded a prima facie satisfaction regarding the possession asserted by the plaintiff and the proforma defendant. It was on that basis that the Trial Court found a *prima facie* case in favour of the plaintiff and considered it appropriate to protect the existing possession against forcible interference or dispossession pending adjudication of the suit.

19. It is well settled that the grant or refusal of temporary injunction is an exercise of judicial discretion governed by the existence of a prima facie case, the balance of convenience and the likelihood of irreparable injury. Equally settled is the principle that an Appellate Court, while examining an order granting or refusing temporary injunction, does not exercise its jurisdiction merely to substitute its own discretion for that of the Trial Court. Interference is warranted where the discretion exercised by the Trial Court is shown to be arbitrary, capricious, perverse or contrary to settled principles of law, or where material circumstances have been ignored. Where the view adopted by the Trial Court is reasonably possible

on the material before it, the mere existence of another possible view would not, by itself, justify appellate interference.

20. Tested on the aforesaid principles, the impugned order does not appear to be sustainable. The Appellate Court, though referring to the revenue extracts and mutation entries, failed to adequately appreciate the material distinction between the two individuals named Girdhari Lal and the separate lines of succession through which the rival parties asserted their claims. The plaintiff, Girdhari Lal, claims through Dharam Chand, whereas the other Girdhari Lal, referred to in the revenue and succession record, was the son of Ganju Ram. The contesting defendant, Brij Lal, claims through Govind Ram. These distinctions were relevant to the determination of the prima facie rights and possession of the parties and could not have been overlooked while considering whether the Trial Court had exercised its discretion on a legally sustainable basis.

21. The record further indicates that Ganju Ram, Vishwanath and Dharam Chand belonged to the same ancestral family, with the contesting defendant claiming through the branch of Ganju Ram and the plaintiff claiming through Dharam Chand. The mere fact that the parties trace their lineage to a common ancestor does not, without more, establish that every parcel of land claimed by one branch continues to be jointly possessed by all the branches. Whether the suit land is jointly owned, whether there has been any lawful partition or arrangement, and whether the parties are entitled to possession of particular portions are questions which necessarily require determination on the basis of pleadings, revenue records and evidence. At the interlocutory stage, however, the Court is

required to assess the existing state of possession and to ensure that the subject matter of the litigation is not disturbed by unilateral acts of either party.

22. In the present case, the contesting defendant asserted co-sharer ship in the suit land but failed, at the stage of consideration of the application for temporary injunction, to place such cogent prima facie material before the Trial Court as would displace the possession found in favour of the plaintiff. A mere assertion of co-ownership, without sufficient supporting material demonstrating an existing right to interfere with the possession claimed by the plaintiff, could not by itself furnish a ground for denying interim protection. Even where parties claim to be co-sharers, the question whether one of them is in settled and separate possession of an identifiable portion of the joint property remains a relevant consideration for the grant of an injunction against forcible dispossession or interference.

23. The Appellate Court appears to have proceeded on the premise that the restraint imposed by the Trial Court would cause greater prejudice to the contesting defendant by reason of his asserted status as a co-sharer. Such an approach, without first examining whether the claim of co-sharership was prima facie supported by the relevant record and whether the defendant was shown to be in possession of the portion sought to be protected, cannot be sustained. The balance of convenience and irreparable injury were required to be assessed in the context of the possession disclosed by the material on record and the consequences

likely to follow from disturbing such possession during the pendency of the suit.

24. The direction to maintain status quo, though ordinarily intended to preserve the subject matter of litigation, cannot be regarded as an adequate substitute for a specific order of injunction in every case. Where the Trial Court has, on a prima facie appreciation of the record, identified the possession requiring protection, a general direction to maintain status quo, without clearly determining the factual position sought to be preserved, may itself give rise to uncertainty and further disputes. In the facts of the present case, the Appellate Court was required to identify a legally sustainable ground for disturbing the specific protection granted by the Trial Court. No such ground is discernible from the reasoning recorded in the impugned order.

25. The objection regarding non-joinder of necessary parties and the plea concerning the maintainability of the suit were also matters requiring consideration by the Trial Court in accordance with law. The existence of such objections did not, in the circumstances of the case, automatically disentitle the plaintiff to interim protection, particularly when the Trial Court had prima facie found possession in his favour. Questions relating to jurisdiction, maintainability and the rights of the respective parties are undoubtedly important, but their determination must proceed in the manner contemplated by law. Unless the Court is demonstrably precluded from exercising jurisdiction or granting the relief sought, the mere raising of such objections cannot, by itself, justify disturbance of possession pending adjudication.

26. Insofar as the pendency of other suits concerning land comprised in Khasra No. 419 is concerned, the same does not, by itself, constitute sufficient justification for interfering with the order passed by the Trial Court. The parties to those proceedings are not shown to be identical in all respects, although the subject matter may overlap. Whether the suits involve substantially common questions of fact and law, whether they ought to be tried together, or whether any procedural arrangement is necessary to avoid conflicting decisions are matters to be examined by the competent Court upon an appropriate application. The parties shall be at liberty to seek consolidation or analogous hearing of the proceedings, if otherwise permissible under law.

27. The learned Trial Court, while dealing with the application under Order XXXIX Rules 1 and 2 CPC, was principally concerned with preserving the subject matter of the suit and protecting the possession prima facie established before it, until the rights of the parties could be finally determined. The Trial Court had considered the material placed on record and exercised its discretion in favour of granting protection against forcible interference and dispossession. The Appellate Court, without demonstrating that the discretion so exercised suffered from perversity, arbitrariness or disregard of settled legal principles, proceeded to modify the order merely on a different appreciation of the rival claims. Such substitution of discretion was not warranted in the facts and circumstances of the case.

28. Having considered the matter in its entirety, this Court is of the view that the Appellate Court failed to appreciate the material circumstances

bearing upon the prima facie possession of the plaintiff and the distinct branches of succession through which the parties claimed their respective rights. The Trial Court had exercised its discretion upon consideration of the relevant material, and no sufficient legal basis existed for the Appellate Court to substitute the order of injunction with a general direction to maintain status quo. The impugned order, therefore, suffers from a material error in the exercise of appellate jurisdiction and warrants interference by this Court.

29. Accordingly, the present petition is allowed. The order dated 16.06.2023 passed by the Additional District Judge, Samba, in the appeal titled ***"Brij Lal v. Girdhari Lal and Another"*** is set aside. Consequently, the order dated 02.03.2023 passed by the Trial Court on the application under Order XXXIX Rules 1 and 2 CPC is restored.

30. However, in order to safeguard the subject matter of the litigation and to ensure that the rights of the parties are not prejudiced during the pendency of the suit, it is directed that the plaintiff shall not create any third-party interest in the suit land until disposal of the suit or until further orders of the competent Court.

31. It is further clarified that the question regarding the maintainability of the suit, including the objection that the jurisdiction of the Civil Court is barred by the provisions of the Agrarian Reforms Act, is expressly left open for consideration by the Trial Court. The Trial Court shall be at liberty to frame and decide a preliminary issue in this regard, if permissible under law, or to determine the objection at the appropriate stage in accordance with the applicable statutory provisions and settled

principles of law. The Trial Court shall proceed with the adjudication of the suit uninfluenced by any observations made herein on the merits of the rival claims, which are confined to the determination of the interlocutory controversy. The rights and contentions of both parties on all substantive issues shall remain open.

32. The petition stands ***disposed of*** in the aforesaid terms.

(Sanjay Parihar)
Judge

Jammu
03.11.2026
Renu

Whether the order is speaking: Yes.
Whether the order is reportable: Yes.