Sr. No. 11

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM(M) No. 325/2025

Parmodh Sabharwal …. Appellant(s)/Petitioner(s)

Through:- Mr. Navyug Sethi, Advocate.

V/s

Sumit Sabharwal and Ors. …..Respondent(s)

Through:- Mr. Rohit Lega, Advocate.

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

ORDER
31.10.2026.

1. The petitioner through the medium of the present petition has challenged order dated 16.10.2025 passed by the learned Sub Judge (Special Mobile Magistrate, Electricity), Jammu whereby his application for placing on record gift deed dated 25.10.2025 and Memorandum of Family Settlement dated 11.01.2003 has been declined.

2. Heard learned counsel appearing for the parties and perused the material on record.

3. It appears that the petitioner/ plaintiff has filed a suit challenging sale deed dated 05.01.2013 executed by defendant no. 1 in favour of the defendant No. 2 with respect to portion measuring 30"x15" consisting of two rooms, one lobby of House No. 328 situated at Rehari Colony Jammu allotted vide Govt. Order No. Reh. 184 of 1971 dated 28.04.1971. The defendant No. 1, who happens to be the father of the plaintiff, was made the head of the family in whose favour the allotment was made.

4. It has been pleaded by the plaintiff that defendant No. 1 in order to avoid any dispute among the family members orally partitioned the

allotted quarter in equal shares amongst his four sons including the plaintiff. According to the plaintiff, the portion of the property which is the subject matter of the impugned sale deed falls to his share and, therefore, it was not open to defendant No. 1 to execute the sale deed in respect of the said portion of the property in favour of defendant No. 2.

5. Learned trial Court on the basis of the pleadings of the parties framed issues vide order dated 29.07.2022. The issues were amended in terms of order dated 16.10.2025. One of the issues framed by the learned trial Court reads as under:-

> *"Whether defendant No. 1 orally partitioned the suit quarter in equal shares among his four sons, namely, Vijay Kumar, Vikram Kumar, Parmodh Kumar and Vinod Kumar."*

6. It seems that during the pendency of the suit, an application was filed by the plaintiff before the learned Trial Court seeking permission to place on record gift deed dated 25.10.2025 executed by defendant No. 1- Sh. Krishan Lal in favour of his grandson defendant No.2 , namely, Sumit Sabarwal. Learned trial Court has rejected the said application on the ground that the document in question does not have any bearing on the controversy involved in the suit and that there are no pleadings in the plaint with regard to the said gift deed, as such, therefore, the same is inadmissible in evidence. According to the learned trial Court is not open to a party to lead evidence beyond his pleadings, therefore, the document cannot be taken on record.

7. The contention of the respondents/ defendants is that existence of the document in question was within knowledge of the plaintiff and infact he has already challenged the said document by way of a separate suit

which is pending before the Court of learned 3rd Additional Munsiff, Jammu. Therefore, he cannot be allowed to file the said document at a belated stage.

8. So far as the relevance of the document in question is concerned, a perusal of the same would reveal that reference to partition of the property in question amongst the sons of defendant No. 1, is specifically made in the covenants of the said document. In the plaint, the plaintiff has specifically pleaded that there has been oral partition of the quarter which was allotted to the family. There is an issue struck by the trial Court on the aspect as to whether oral partition of the suit quarter has taken place. For the purpose of determining the said issue, the document in question certainly assumes relevance as its covenants make reference to the parties. Thus, the observation of the learned trial Court that the document in question has no relevance is perverse.

9. The issue with regard to the partition has been specifically pleaded by the plaintiff and it is not a case where the said plea has been set up by the plaintiff for the first time at the stage of filing the application for placing on record gift deed dated 25.10.2025. The existence of said document is within the knowledge of the defendant No. 2- Sumit Sabarwal, who is the beneficiary of the said document. Therefore, it cannot be stated that by taking on record the said document, any new plea is being introduced by the plaintiff, or that defendant would be taken by surprise by introduction of the said document.

10. So far as the contention in relating to belated production of the document is concerned, in this regard the plaintiff has averred in the

application that he was not aware about the existence of the said document and that he came to know about its existence subsequently. The suit for challenging the document in question has been filed by the plaintiff on 10.10.2023 whereas the application for placing on record the document has been filed before the learned trial Court on 01.02.2025. There is no material on record to show that the plaintiff had the knowledge about the existence of the gift deed in question prior to filing of suit in the year 2023. Thus, there is hardly any delay on the part of the plaintiff in moving the application for placing on record the document in question.

11. In any case, the suit is at the stage of recording of plaintiff's evidence and, therefore, even if the document in question is taken on record, the defendants would have an opportunity not only to cross examine the witnesses of the plaintiff but also to lead evidence in rebuttal on the said issue. Thus, no prejudice is going to be caused to the defendant if the documents in question are taken on record.

12. The learned trial Court has not adverted itself to aforesaid aspects of the matter, thereby leaving itself into a grave error. Thus, the impugned order passed by the learned trial Court being not sustainable in law is set aside and the documents sought to be placed on record by the plaintiff by virtue of IA dated 01.02.2025 are directed to be taken on record.

13. The petition stands **disposed of.**

(Sanjay Dhar)
Judge

JAMMU
31.10.2026
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