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

Reserved on: 06.10.2026
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Whether the operative part or full judgment is pronounced: ***Full***

CM(M) No.283/2026

MOHAMMAD KHURSHID ALAM AND OTHERS

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. A.M. Dar, Sr. Advocate with
Ms. Monisa, Advocate.

Vs.

SARITA BHATEJA AND OTHERS.

...RESPONDENT(S)

Through: - Mr. M.A. Makhdoomi, Advocate with
Ms. Shaista, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The petitioners, through the medium of this petition filed under Article 227 of the Constitution of India, have assailed the order dated 29.06.2026 passed by the Court of learned Additional District Judge, Srinagar (for short, 'the Trial Court') in suit titled "***Sarita Bhateja v. Lakhwinder Singh and others",*** whereby the learned Trial Court has allowed the application filed by respondent No.1/plaintiff under Order VIII Rule 9 of the CPC and permitted her to file replication to the written statement of the petitioners.

2) The petitioners have impugned the order dated 29.06.2026 on the ground that the learned Trial Court exercised its jurisdiction with material irregularity, disregarding the settled propositions of law on subsequent pleadings. Permission to file a replication cannot be granted mechanically; the Court is required to examine whether the written statement introduces new facts that warrant a reply from the plaintiff. The learned Trial Court manifestly failed to adhere to this legal requirement. Moreover, it failed to appreciate that the petitioners' written statement set up no counter-claim, new fact, or affirmative defense, but merely denied the averments in the amended plaint and had raised recognized defences concerning limitation, *bona fide* purchase, absence of notice of alleged fraud, legal effect of registered sale deeds, possession, jurisdiction, protection under Section 41 of the Transfer of Property Act, and the effect of the proceedings at Hoshiarpur.

3) Learned Senior Counsel for the petitioners has reiterated the submissions and contentions as recorded above by this Court. He has relied upon the judgment of the Hon'ble Supreme Court of India in "**Sheikh Noorul Hassan** v. **Nahakkapam Indrajit Singh and others"**, 2024 INSC 391, wherein it has been held that replicaion is not a substitute for amendment and new cause of action or a plea

inconsistent with the original plaint cannot be introduced through subsequent pleading.

4) *Per contra*, learned counsel for respondent No.1 has argued that the learned Trial Court has rightly allowed the replication upon considering the written statement. He submitted that the impugned order causes no prejudice to the petitioners and does not decide the rights of the parties with finality, emphasizing the well-settled principle that mere pleadings carry no evidentiary value unless proved by cogent evidence. He has relied upon the judgment of the Hon'ble Supreme Court of India in **Shalini Shyam Shetty** v. **Rajendra Shankar Patil,** (2010) 8 SCC 329.

5) Heard and perused the record.

6) Record reveals that after permission was granted to respondent No. 1 to amend the suit, and amended plaint came to be filed seeking a decree of declaration be passed, declaring the impugned power of attorney and the consequential sale deeds drawn and executed by the defendants *inter se* in in respect of the suit property comprising of land measuring 4 Kanals comprising Survey No.1531/61 (1 Kanal 4 Marlas) and Survey No.1941/1448/59 (2 Kanals 16 Marlas), along with structures raised over it, situated at Kursoo Padshahi Bagh

Srinagar and land measuring 15 marlas falling under Survey no. 1941/1448/59 min situated at Kursoo Padshahi Bagh Srinagar, as null and void, inoperative, and ineffective against the rights and interest of respondent No.1 and not binding on her. Respondent No. 1 also sought a decree for possession regarding the above-mentioned property and for permanent prohibitory injunction restraining defendant No. 3 or anyone claiming through her from alienating or creating third party interest in the suit property.

7) The petitioners filed written statement and objected to the suit on various grounds. Respondent No.1 filed an application for filing replication to the averments made in Paras 2, 3, 4, 5 6 of the preliminary objections and Paras 7(ii) and 7(iv) under the heading "para-wise reply" of the written statement of the petitioners and also to the written statement of defendant No.7 i.e. respondent No.4. In their response, the petitioners submitted that Respondent No. 1 was attempting to set up an entirely new cause of action inconsistent with her original pleadings. They contended that such an approach is impermissible in law as a party cannot be allowed to re-frame its case through a replication and accordingly prayed for dismissal of the application. The

learned Trial Court, in terms of the order impugned, allowed the application preferred by respondent No.1.

8) It was vehemently argued by the learned counsel for Respondent No. 1 that no prejudice has been caused to the petitioners by permitting Respondent No. 1 to file a replication to the specific pleas raised in the written statement. As such, the petition deserves to be dismissed.

9) In ***Shalini Shyam Shetty*** *v.* ***Rajendra Shankar Patil***, (2010) 8 SCC 329, the Hon'ble Apex Court has dealt in detail the scope of interference under Article 227 of Constitution of India and the relevant paras are extracted as under:

> **49.** On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:
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> (*a*) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.
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> (*b*) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.
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> (*c*) **High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this**

power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(*d*) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* [AIR 1954 SC 215] and the principles in *Waryam Singh* [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(*e*) According to the ratio in *Waryam Singh* [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".

(*f*) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(*g*) Apart from the situations pointed in (*e*) and (*f*), **High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.**

(*h*) **In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.**

(*i*) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution

Bench of this Court in *L. Chandra Kumar* v. *Union of India* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.

(*j*) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(*k*) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(*l*) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(*m*) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(*n*) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its

exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.

10) In ***Garment Craft v. Prakash Chand Goel*, (2022) 4 SCC 181,** the Hon'ble Apex Court has held as under:

> **"15.** Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. **The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.** [*Celina Coelho Pereira* v. *Ulhas Mahabaleshwar Kholkar*, (2010) 1 SCC 217] **The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice.** The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. **It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.**
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> **16.** Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber* v. *Dass Estate (P) Ltd.* has observed :
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> > "*6*. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. **The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not**

> **vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record.** The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

11) From the authoritative pronouncements of the Hon'ble Apex Court cited above, it is well settled that this Court, while exercising powers under Article 227 of the Constitution of India, does not sit as a court of appeal or revision. Its supervisory jurisdiction is strictly confined to determining whether a subordinate court has committed a jurisdictional error resulting in a grave miscarriage of justice. A mere error of law or fact, howsoever grave, cannot be rectified under Article 227 unless it partakes the character of a jurisdictional error on the part of the court below resulting in miscarriage of justice.

12) The scope of Order VIII Rule 9 has been considered by the Hon'ble Supreme Court of India in "**Sheikh Noorul**

Hassan v. **Nahakkapam Indrajit Singh and Others"**, and para 21 of the said judgement is extracted as under:

> 21. However, such leave is not to be granted mechanically. The Court before granting leave must consider the averments made in the plaint/election petition, the written statement and the replication. **Upon consideration thereof, if the Court feels that to ensure a fair and effective trial of the issues already raised, the plaintiff/election petitioner must get opportunity to explain/clarify the facts newly raised or pleaded in the written statement, it may grant leave upon such terms and it deems fit. Further, while considering grant of leave, the Court must bear in mind that, - (a) a replication is not needed to merely traverse facts pleaded in the written statement, and (c) a new cause of action or plea inconsistent with the plea taken in original petition/plaint is not to be permitted in the replication**.

13) It would be also profitable to take note of the judgment of the Hon'ble Supreme Court of India in **K. Laxman** v. **Thekkayil Padmini**, (2009) 1 SCC 354, and the relevant Para 29 is extracted as under:

> **29.** Pleadings as we understand under the Code of Civil Procedure (for short "the Code") and as is defined under the provision of Rule 1, Order 6 of the Code consist only of a plaint and a written statement. The respondent-plaintiff could have filed a replication in respect to the plea raised in the written statement, which if allowed by the court would have become the part of the pleadings, but mere non-filing of a replication does not and could not mean that there has been admission of the facts pleaded in the written statement. The specific objection in the form of denial was raised in the affidavits filed in respect of the injunction applications which were accepted on record by the trial court and moreover the acceptance on record of the said affidavit was neither challenged nor questioned by the present appellant.

14) The settled legal position emerging from the decisions cited above is that a replication cannot be allowed routinely

to traverse the written statement, nor can it be used as a substitute for amending the plaint. No new cause of action or inconsistent plea can be introduced through a replication. However, if the Court is satisfied that a response from the plaintiff is required to clarify or meet new facts pleaded in the written statement for a full and fair adjudication of the dispute, it may grant leave subject to appropriate conditions.

15) In light of the above legal position, this Court would now examine the contentions raised by the petitioners. The perusal of the order impugned reveals that respondent No.1 has been permitted to file replica in reply to Para 2 of the preliminary objections raised in written statement, wherein the petitioners have asserted that they are *bona fide* purchasers in good faith. Respondent No. 1 has simply explained in detail the lack of *bona fides* on the part of the petitioners.

16) Further, in Para 3 of the preliminary objections of the written statement, reference was made to the proceedings before the Hoshiarpur Court, and in terms of replication, respondent No. 1 has simply clarified the proceedings before the Court at Hoshiarpur.

17) Further, in Para 4 of the preliminary objections of the written statement filed by the petitioners, it was stated by them that the suit was time-barred, and in the replication, respondent No. 1 has denied the same. Granting leave to Respondent No. 1 to reply to Paragraph 4 of the preliminary objections was unjustified, as leave to file a replication cannot be granted merely to deny the pleas raised in the written statement.

18) Further, in the averments made in Para 5 of the preliminary objections, it was stated that respondent No.1 very cleverly filed the application for amendment of the suit after twelve long years and, in fact, respondent No.1 has changed the entire cause of action of the suit by seeking fake and fictitious deletion of the defendants and also by inserting new cause of action which was not permissible. Respondent No.1 has categorically explained in the replication that the cause of action has not been changed and the petitioners have no right whatsoever to agitate their grievances against the amendment once it has been allowed by the Court after due consideration.

19) Further, in Para 6 of the preliminary objections of the written statement, it was stated that the petitioners were protected under law, especially by Section 41 of the Transfer

of Property Act, which virtually protects the *bona fide* purchaser. Respondent No. 1 was permitted to respond to the same in the replication, wherein it was stated that Section 41 was not applicable and there was complete failure on the part of the petitioners and their predecessors to exercise due diligence and care, as there was no consent of original co-owner Radha Krishan Kutyala, the predecessor-in-interest of respondent No. 1.

20) In Para 7(ii) of the para-wise reply of the written statement, it was stated by the petitioners that respondent No.1 and her predecessor-in-interest were to be presumed as migrants. Respondent No.1 has responded to the same by asserting that if the status of respondent No. 1 is assumed as migrant, then the Jammu and Kashmir Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997, was required to be followed mandatorily for selling the migrant property. It is further stated in the replication that the brazen dichotomy of the stand of the petitioners is too conspicuous to ignore, which is self-destructive, and the stand of the petitioners, that they were bona fide purchasers, falls flat in the face of facts emanating.

21) Besides, in Para 7(iv) of the para-wise reply, it was stated that defendant Nos.1 and 2 are in collusion with respondent No.1, and defendant No.1 has been declared by the Court as absconder. Respondent No. 1 in her replica has denied that defendant No.1 had any familial relationship with her, and it is stated that defendant No. 2 is her step-cousin who got separated from the family in the year 1946 and is a black sheep who has been in litigation with the predecessor-in-interest of respondent No.1 for the last 50 years.

22) This Court has taken note of the facts pleaded by the petitioners in their written statement sought to be replied to by respondent No.1, and this Court does not find that respondent No.1 has set up an inconsistent case in her replication. The trial court permitted the replication to meet specific facts introduced by the petitioners rather than as a mere traversal of the written statement, though leave ought to have been restricted so as to exclude a response to the plea of limitation.

23) It is not the case where the learned Trial Court has, without assigning any reason and without considering the pleas, sought to be replied to by respondent No. 1, has permitted respondent No.1 to file replication. In fact, the

learned Trial Court carefully examined the facts pleaded by the petitioners in their written statement before granting leave to Respondent No.1 to explain and clarify those averments. Upon an objective appraisal of the impugned order, this Court is of the view that, except for the leave granted to Respondent No. 1 to respond to the plea of limitation, the learned Trial Court has exercised its jurisdiction strictly within the parameters of law. The mere fact that Respondent No. 1 was permitted to address the issue of limitation would not, by itself, justify setting aside the impugned order in its entirety, particularly when it has not resulted any mis-carriage of justice to the petitioners.

24) In view of the above, this Court is of the considered view that the impugned order has not resulted in any miscarriage of justice, nor has the learned Trial Court committed any jurisdictional error warranting interference by this Court. This petition is found to be without merit, dismissed.

(Rajnesh Oswal)
Judge

Srinagar,
30.10.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES**